









# **THE CRIMINAL PROCEDURE CODE**

**(Act No. V of 1898)**

**BY**

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## P R E F A C E .

THIS book is meant to be a companion volume to the authors' students' edition of the Indian Penal Code. It has been specially written with the object of enabling the student to understand and grasp the principles of criminal procedure. Every effort is made to make it a lucid, reliable, and practical guide for one who has to master the subject.

In this edition the case-law has been brought down up to date and all the amendments to the text, made by the Central as well as the Provincial Legislatures, are incorporated.

An analytical summary of the provisions of the Code, given at the end of the book, presents to the beginner a bird's-eye view of the whole Code. To one who has read the provisions it will prove useful for revision.

The Appendix contains questions set at different law examinations. The questions will direct the attention of the student to portions demanding special care.

Finally, it may be observed that a critical study of this book will enable the student to acquire a sound and thorough knowledge of criminal procedure, and to tackle any question set by a sensible examiner.

*January, 1946.*

R. R.  
D. K. T.



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## EXPLANATIONS OF ABBREVIATIONS.

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A. C.	.. Appeal Cases, Law Reports, from 1891—
A. I. R.	.. All India Reporter, from 1914—
All.	.. Indian Law Reports, Allahabad Series, from 1876—
B. H. C.	.. Bombay High Court Reports, 1862-1875.
Bom.	.. Indian Law Reports, Bombay Series, from 1876—
Bom. L. R.	.. Bombay Law Reporter, from 1899—
C. L. J.	.. Calcutta Law Journal, from 1905—
C. W. N.	.. Calcutta Weekly Notes, from 1896—
Cr. L. J.	.. Criminal Law Journal, from 1904—
Cr. R.	.. Criminal Rulings of the Bombay High Court, from 1862-1910.
Cal.	.. Indian Law Reports, Calcutta Series, from 1876—
I. A.	.. Law Reports, Indian Appeals, from 1872—
Kar.	.. Indian Law Reports, Karachi Series, from 1940—
L. B. R.	.. Lower Burma Rulings, 1901-1922.
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# THE CRIMINAL PROCEDURE CODE

(ACT No. V OF 1898.)

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*[Received the assent of the Governor-General on March 22, 1898.]*

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An Act to consolidate and amend the law relating to the Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure ;

It is hereby enacted as follows :—

## PART I.

### PRELIMINARY.

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#### CHAPTER I.

1. (1) This Act may be called the Code of Criminal Procedure,  
Short title. 1898 ; and it shall come into force on the first day  
Commencement. of July, 1898.

(2) It extends to the whole of British India ; but, in the absence  
Extent. of any specific provision to the contrary,<sup>1</sup> nothing  
herein contained shall affect any special or local law  
now in force, or any special jurisdiction or power conferred, or any  
special form of procedure prescribed, by any other law for the time  
being in force, or shall apply to—

- (a) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay ;
- (b) heads of villages in the Presidency of Fort St. George ; or
- (c) village police-officers in the Presidency of Bombay :

Provided that the Provincial Government may, if it thinks fit, by notification in the Official Gazette, extend any of the provisions of this Code, with any necessary modifications, to such excepted persons.

COMMENT.—There was at first no uniform law of criminal procedure for the whole of India. There were separate Acts, mostly rudimentary in their character, to guide the procedure of the numerous Courts in the provinces and in the presidency-towns. Those applying to the presidency-towns were first consolidated by the Criminal Procedure Supreme Courts Act (XVI of 1852), which in course of time gave place to the High Court Criminal Procedure Act (XIII of 1865). The Acts of procedure applying to the provinces were replaced by the general Criminal Procedure Code (Act XXV of 1861), which was replaced by Act



X of 1872. It was the Criminal Procedure Code of 1882 (Act X of 1882) which gave for the first time a uniform law of procedure for the whole of India both in presidency-towns and in the mofussil; and it was supplanted by the present Code in 1898. This last Act has been amended by many amending Acts.

Ordinarily, the Code does not affect (1) special law (s. 41, Penal Code), (2) local law (s. 42, Penal Code), (3) special jurisdiction or power, or (4) special form of procedure. Also it does not affect (5) the police in the towns of Calcutta, Madras and Bombay, who are governed by City Police Acts of the local Legislatures; (6) the heads of villages in Madras (Madras Regulations XI of 1816 and IV of 1821); and (7) the village police-officers in Bombay (Bom. VIII of 1867).

With the above exceptions, the Code extends to the whole of British India. Most of the Indian States have made it their law. It is put into force in foreign British possessions by Orders in Council. It guides the procedure at trials in British India of British seamen for offences committed by them on a British ship on the high seas which are punishable under the English law.<sup>1</sup>

The Criminal Procedure Code is mainly an adjective law of procedure. The object of a criminal code of procedure is to provide a machinery for the punishment of offenders against the substantive criminal law,<sup>2</sup> e.g. the Indian Penal Code. In fact, the two Codes are to be read together. Some terms are specially defined in the Criminal Procedure Code, but in the absence of such definition, the definitions set out in the Indian Penal Code are to be adopted (s. 4). The Code also provides machinery for punishment of offences under other Acts. It is, however, worthy of note that the Code is not a pure adjective law. It starts with the creation of different grades of Courts, and defines their powers (Chapters II and III). It proceeds to formulate the duties of the police in investigating into offences (Chapter IV), and in arresting offenders (Chapters V and VI), and in production of documents, etc. (Chapter VII). The real procedure is dealt with in Chapters XV to XXX (which refer to trials), and Chapters XXXI and XXXII (which deal with appeals, reference and revision). There are, moreover, certain provisions of the Code which partake of the nature of substantive law, e.g. prevention of offences (Chapters VIII to XIII), maintenance proceedings (Chapter XXXVI), and habeas corpus proceedings (Chapter XXXVII).

Enactments regulating the procedure in Courts seem usually to be imperative and not merely directory.<sup>3</sup> In other words, the rules of procedure are enacted to be obeyed. The object of these rules is to simplify and shorten proceedings. It is not always easy to keep strictly to the line of procedure prescribed, and irregularities do occur now and then in trials of cases. The Code itself divides such irregularities into two classes: (1) irregularities which do not vitiate proceedings (s. 529), and (2) irregularities which vitiate proceedings (s. 530). It also provides that no error, omission or irregularity in a trial shall vitiate a finding, sentence or order unless it has occasioned a failure of justice (s. 537). The Code further preserves the inherent right of the High Court to make orders (1) to give effect to any order under the Code, or (2) to prevent abuse of the process of any Court, or (3) to secure the ends of justice (s. 561A).

So far as it deals with any point specifically, the Code must be deemed to be exhaustive and the law must be ascertained by reference to its provisions; but where a case arises, which demands interference and it is not within those for which

<sup>1</sup> *Gunning*, (1894) 21 Cal. 782; *Bom.* 590, 597; *Mona Puna*, (1892) 16 *Elmstone*, (1870) 7 B. H. C. R. (Cr. C.) *Bom.* 661.

<sup>2</sup> *Maxwell on the Interpretation of Statutes*, 8th Edn., p. 324.

<sup>3</sup> *Ganesh Narayan Sathe*, (1889) 13

the Code specifically provides, it would not be reasonable to say that the Court had not the power to make such order as the ends of justice required.<sup>1</sup> Absence of any provision on a particular matter in the Code does not mean that there is no such power in a criminal Court which may act on the principle that every procedure should be understood as permissible till it is shown to be prohibited by law.<sup>2</sup>

In general, there is no limitation of time in filing complaints. They can be filed at any time. But it is to be remembered that delay in the filing of complaints is attended with two evils : first, the memory of witnesses is likely to fade by passage of time ; and, secondly, valuable links of evidence may disappear, e.g. death of witnesses, destruction of property, etc. In cases of infringement of trade-mark (ss. 478, 489, Indian Penal Code), the complaint should be filed within one year.<sup>3</sup> The Indian Limitation Act (IX of 1908) provides periods of limitation within which appeals should be filed (articles 150, 154, 155 and 157) ; and though no period is prescribed within which applications for revision can be filed in the High Court, the High Court of Bombay has provided a period of sixty days for this purpose (secr. 69(2) of the Bombay High Court Rules, Appellate Side, 1936).

Ordinarily, it is open to anyone, even a stranger, to set the criminal law in motion.<sup>4</sup> In certain classes of offences, however, it is only the person aggrieved who can start the proceedings (see ss. 195 to 199, Criminal Procedure Code).

1. 'In the absence of any specific provision to the contrary.'—These words mean a specific provision that the Code is to override the special law.<sup>5</sup> The Calcutta High Court has held that these words mean and contemplate a provision specifically withdrawing the saving provision relating to the special or local law. This specific provision to the contrary need not be in the Code itself, but may also be in the special or local law. These words do not refer to any possible contrariety between a specific provision in the Code and a provision in a special statute. In order that one provision can be said to be a specific provision to the contrary to another, the former must completely cover the field of operation of the latter and must altogether nullify it.<sup>6</sup> The Allahabad High Court has held that "a specific provision to the contrary" means that the particular provision of the Code must, in order to affect the special law, clearly indicate, in itself and not merely by implication to be drawn from the statute generally, that the special law in question is to be affected, without necessarily referring in express terms to that special law or the effect on it intended to be produced.<sup>7</sup>

2. [*Repeal of enactments, notifications, etc., under repealed Acts. Pending cases.*] *Repealed by the Repealing and Amending Act, 1914 (X of 1914).*

3. (1) In every enactment passed before this Code comes into force in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act XXV of 1861 or Act X of 1872, or Act X of 1882, or to any other enactment hereby repealed, such reference shall, so far as may be practicable,

References to Code of Criminal Procedure and other repealed enactments.

<sup>1</sup> *Nagen Kundu*, (1984) 61 Cal. 498.

<sup>2</sup> *Hansraj*, [1942] Nag. 383; *Rahim Sheikh*, (1923) 50 Cal. 872, 875.

<sup>3</sup> Merchandise Marks Act (IV of 1889), s. 15; *Chhotulal Amarchand*, (1936) 38 Bom. L. R. 1164, [1937] Bom. 183, F.B.; *Rupell v. Ponnusami Tevar*, (1899) 22 Mad. 488.

<sup>4</sup> *Ganesh Narayan Sathe*, (1898) 13 Bom. 590, 600.

<sup>5</sup> *Biram Sardar*, (1940) 43 Bom. L. R. 157, [1941] Bom. 383.

<sup>6</sup> *Naresh Chandra Das*, [1942] 1 Cal. 436.

<sup>7</sup> *Baldeo*, [1940] All. 396.

be taken to be made to this Code or to its corresponding chapter or section.

(2) In every enactment passed before this Code comes into force Expressions in the expressions "Officer exercising (or 'having') former Acts. the powers (or 'the full powers') of a "Magistrate", "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class" and "Magistrate of the third class," the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate," the expression "Magistrate of the district" shall be deemed to mean "District Magistrate," the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate," and the expression "Joint Sessions Judge" shall mean "Additional Sessions Judge."

4. (1) In this Code the following words and expressions have Definitions. the following meanings, unless a different intention appears from the subject or context:—

(a) "Advocate General" includes also a Government Advocate or, where there is no Advocate General or Government Advocate, such officer as the Provincial Government may, from time to time, appoint in this behalf:

(b) "bailable offence" means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence:

(c) "charge" includes any head of charge when the charge contains more heads than one:

(d) [*Repealed by s. 3 of Act XI of 1923, Schedule II.*]

(e) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

(f) "cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, within or without the presidency-towns, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant:

COMMENT.—Offences for which special authority to arrest is given to special officers are not cognizable offences, e.g. an offence under s. 5 of the Bombay Prevention of Gambling Act is not a cognizable offence.<sup>1</sup>

(g) "Commissioner of Police" includes a Deputy Commissioner of Police:

(h) "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known

<sup>1</sup> *Haji Mahmood Khan*, [1942] Kar. 94.

or unknown, has committed an offence, but it does not include the report of a police-officer :

**COMMENT.**—In general a complaint into an offence can be filed by any person, except in cases of offences relating to marriage, defamation, lotteries and offences mentioned in ss. 195 and 198.<sup>1</sup>

A complaint in a criminal case is what a plaint is in a civil case. It is one of the modes in which a Magistrate can take cognizance of an offence (s. 190). The requisites of a complaint are : (1) an oral or a written allegation ; (2) that some person known or unknown has committed an offence ; (3) it must be made to a Magistrate ; and (4) it must be made with the object that he must take action.<sup>2</sup> All these requirements are fulfilled by a report of a police-officer, but it is expressly excluded from the definition.

According to the Nagpur High Court the report of a police-officer whether in a cognizable or a non-cognizable offence does not constitute a ' complaint.'<sup>3</sup> The Rangoon High Court has held that when a police-officer investigates a non-cognizable case under the orders of a Magistrate, the report is not a complaint, though if a police-officer, acting without instructions from a Magistrate, reports a non-cognizable offence to a Magistrate with a view to the Magistrate taking action, this is a complaint.<sup>4</sup>

"European British subject." (i) "European British subject" means—

(i) any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or any Colony, or

(ii) any subject of His Majesty who is the child or grandchild of any such person by legitimate descent :

**COMMENT.**—In order to bring a person within the definition of European British subject it is not enough to prove simply that he was born in England. It must further be proved that he was of European descent.<sup>5</sup>

(j) "High Court" means, in reference to proceedings against

"High Court." European British subjects or persons jointly charged with, European British subjects, the High Courts of Judicature at, Fort William, Madras, Bombay, Allahabad, Patna, Lahore and Nagpur, the Chief Court of Oudh and Court of the Judicial Commissioner of Sind : in other cases "High Court" means the highest Court of criminal appeal or revision for any local area ; or, where no such Court is established under any law for the time being in force, such officer as the Provincial Government may appoint in this behalf :

(k) "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court :

(l) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf :

**COMMENT.**—The three terms "investigation," "inquiry" and "trial" denote three different stages of a criminal case. The first stage is reached when

<sup>1</sup> *Ganesh Narayan Sathe*, (1889) 18 Bom. 590, 308 ; *Fazant Ali v. Hanuman Prasad*, (1896) 18 All. 465.

<sup>2</sup> See *Lal Singh Deo v. Judhishtir Modak*, (1929) 9 Pat. 707 ; *Lakhan*,

[1937] All. 162.

<sup>3</sup> *Babulal Parwar*, [1936] Nag. 50.

<sup>4</sup> *Jagdeo v. Hill*, [1938] Ran. 150.

<sup>5</sup> *Plucknett*, [1938] 1 Cal. 162.

a police-officer either by himself or under the orders of a Magistrate investigates into a case (s. 202). If he finds that no offence has been committed he reports the fact to a Magistrate who drops the proceedings and the case comes to an end (s. 203). But if he is of a contrary opinion, he sends up the case to a Magistrate. Then begins the second stage, which is either a trial or an inquiry. The Magistrate may deal with the case himself, and either convict the accused, or discharge or acquit him. But if the Magistrate forms an opinion that the case is a serious one not triable by himself, or is one triable by himself but he is not competent to pass an adequate sentence on the accused on conviction, then he commits the case to the Court of Session, after he conducts what is called an "inquiry" into the case and finds that a *prima facie* case has been made out against the accused. These are known as "crommittal proceedings." The third and final stage of a case is reached when the accused is placed for "trial" before the Sessions Court, which may either be in a district town or in a presidency-town before the High Court. All trials in the former may be had either by a jury or with assessors, but they can only be by a jury in the latter.

(m) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath:

**COMMENT.**—The term "judicial proceeding" includes "inquiry" and "trial" but not "investigation." It is also explained in s. 193, and referred to in ss. 192 and 228 of the Indian Penal Code. The term includes an execution proceeding,<sup>1</sup> an enquiry before the issue of an order under s. 144,<sup>2</sup> an enquiry under s. 176,<sup>3</sup> and preliminary inquiry under s. 476.<sup>4</sup>

(n) "non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, within or without a presidency-town, may not arrest without warrant:

(o) "offence" means any act or omission made punishable by any law for the time being in force; it also includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871:

**COMMENT.**—The term 'offence' is more elaborately defined in s. 40 of the Indian Penal Code. There is a special definition of "offence" in s. 44 of this Code.

(p) "officer in charge of a police-station" includes, when the officer in charge of the police-station is absent from the station-house or unable, from illness or other cause to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the Provincial Government so directs, any other police-officer so present:

(q) "place" includes also a house, building, tent and vessel:

(r) "pleader," used with reference to any proceeding in any Court, means a pleader or a mukhtar authorized under any law for the time being in force to practise

<sup>1</sup> *Bahadur v. Eradatullah Mallick*, (1910) 37 Cal. 642, F.B.

<sup>2</sup> *Tirunarasimha Chari*, (1895) 19 Mad. 18.

<sup>3</sup> *Advocate General, Burma v. Maung Chit Maung*, [1940] Ran. 188.

<sup>4</sup> *Faiz Ali*, (1909) 37 Cal. 27.

in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any other person appointed with the permission of the Court to act in such proceeding :

**COMMENT.**—Class (2) would include a non-legal person, e.g. an estate agent,<sup>1</sup> a constituted attorney.<sup>2</sup>

Advocates on the Appellate Side of the High Court do not come within the definition of 'pleader' for the purposes of the High Court Sessions, because they are not authorised by law for the time being in force to practise in that Court.<sup>3</sup>

(s) "police-station" means any post or place declared, generally or specially, by the Provincial Government to be a police-station, and includes any local area specified by the Provincial Government in this behalf :

(t) "Public Prosecutor" means any person appointed under "Public Pro- section 492, and includes any person acting under secutor." the directions of a Public Prosecutor and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction :

"Sub-division." (u) "sub-division" means a sub-division of a district :

(v) "summons-case" means a case relating to an offence, and not "Summons-case," being a warrant-case : and

(w) "warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for "Warrant-case." a term exceeding six months.

**COMMENT.**—The division of cases into summons and warrant cases is based on the punishment which can be awarded. Those cases which are punishable with imprisonment for six months and under are summons cases : the rest are all warrant cases. The division marks off ordinary cases from serious ones, and determines the mode of trials. The procedure for the trial of summons cases is provided by Chap. XX, while that for warrant cases is dealt with in Chap. XXI. The distinction here made has nothing to do with the question whether a summons or a warrant shall issue in the first instance, which is dealt with in col. 4 of sch. II.

"Words referring (2) Words which refer to acts done extend also to acts." to illegal omissions ; and

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

5. (1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment against other laws.

<sup>1</sup> *Dorabhai*, (1925) 28 Bom. L. R. 120, 50 Bom. 250.

<sup>2</sup> *Jaffar*, (1934) 36 Bom. L. R. 433.

<sup>3</sup> *Godinho*, (1933) 36 Bom. L. R. 1, 58 Bom. 450, F.B.

ment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

**COMMENT.**—Sections 5, 28, and 29, govern every criminal proceeding both as regards the tribunal by which crime is to be tried and as to the procedure to be followed.<sup>1</sup>

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## PART II.

### CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

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#### CHAPTER II.

##### OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

###### *A.—Classes of Criminal Courts.*

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

Classes of Criminal Courts.

I.—Courts of Session :

II.—Presidency Magistrates :

III.—Magistrates of the first class :

IV.—Magistrates of the second class :

V.—Magistrates of the third class.

**COMMENT.**—Criminal Courts are classified into five groups. But in reality they are more. A Court of Session may either be in a presidency-town or in a district, each having a different procedure and differing powers. Among the Presidency Magistrates, one of them is a Chief Presidency Magistrate; and they are either stipendiary or honorary. Similarly the Magistrates of the three classes are either paid or honorary; and honorary Magistrates may either sit singly or in benches of two or more of them. Among the paid Magistrates of the first class, in a district, one is a District Magistrate who is in charge of the district; and among Magistrates of the first and second class there are as many Sub-divisional Magistrates as there are sub-divisions in the district. These have special duties assigned to them by the Code. There are also Courts of Coroners in the presidency-towns constituted by the Coroners' Act (IV of 1871); Courts of Cantonment Magistrates in cantonments, under the Cantonment Act (II of 1924); and in the villages of the Bombay Presidency, there are Courts of Village Police Patels under the Village Police Act (Bom. VIII of 1867).

###### *B.—Territorial Divisions.*

7. (1) Every province (excluding the presidency-towns) shall be a sessions division, or shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or consist of districts.

Sessions divisions and districts.

<sup>1</sup> *Benoari Lall Sarma*, [1948] F. C. R. 96.

Power to alter divisions and districts.

(2) The Provincial Governments may alter the limits or the number of such divisions and districts.

Existing divisions and districts maintained till altered.

Presidency-towns to be deemed districts.

(3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.

(4) Every presidency-town shall, for the purposes of this Code, be deemed to be a district.

**COMMENT.**—The object of sub-s. (1) is to lay down a rule governing the relation between sessions divisions and districts, that is, a sessions division shall not consist of half a district or even one and a half district, but shall consist of one district or a plurality of whole districts. The word 'district' is a district for the purposes of criminal administration.<sup>1</sup>

8. (1) The Provincial Government may divide any district outside the presidency-towns into sub-divisions, or make any portion of any such district a sub-division and may alter the limits of any sub-division.

(2) All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

*C.—Courts and Offices outside the Presidency-towns.*

9. (1) The Provincial Government shall establish a Court of Session for every sessions division, and appoint a judge of such Court.

(2) The Provincial Government may, by general or special order in the Official Gazette, direct at what place or places the Court of Session shall hold its sitting; but, until such order is made, the Courts of Session shall hold their sittings as heretofore.

(3) The Provincial Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(4) A Sessions Judge of one sessions division may be appointed by the Provincial Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Provincial Government may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

10. (1) In every district outside the presidency-towns the Provincial Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) The Provincial Government may appoint any Magistrate of the first class to be an additional District Magistrate and such

<sup>1</sup> *Arumugha Solagan*, (1931) 54 Mad. 943, F.B.



Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force, as the Provincial Government may direct.

(3) For the purposes of sections 192, sub-section (1), 407, sub-section (2) and 528, sub-sections (2) and (3) such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the Provincial Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

12. (1) The Provincial Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency-towns; and the Provincial Government or the District Magistrate, subject to the control of the Provincial Government may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

COMMENT.—A Magistrate appointed to act as a Magistrate in a district has, unless his powers have been restricted to a certain local area, jurisdiction over the entire district.<sup>1</sup> Where, however, a Magistrate is transferred from one district to another he loses jurisdiction to try a case in the former district. Nor can he deliver judgment in such a case after he has delivered over the charge.<sup>2</sup>

13. (1) The Provincial Government may place any Magistrate of the first or second class in charge of a sub-division. and relieve him of the charge as occasion requires.

(2) Such Magistrates shall be called Sub-divisional Magistrates.

(3) The Provincial Government may delegate its powers under this section to the District Magistrate.

14. (1) The Provincial Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area outside the presidency-towns.

<sup>1</sup> *Sarat Chunder Roy v. Bepin Chandra Roy*, (1902) 29 Cal. 389. *Balwant v. Kishen*, (1896) 19 All. 114; *Bainsab Charan Das v. Amin Ali*,

<sup>2</sup> *Anand Sarup*, (1881) 3 All. 563; (1923) 50 Cal. 604.

(2) Such Magistrates shall be called Special Magistrates, and shall be appointed for such terms as the Provincial Government may by general or special order direct.

(3) The Provincial Government may delegate, with such limitations as it thinks fit, to any officer under its control the powers conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

15. (1) The Provincial Government may direct any two or more Magistrates in any place outside the presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or, such classes of cases only, and within such local limits, as the Provincial Government thinks fit.

(2) Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

COMMENT.—The words “sit together” in sub-s. (1) mean constitute. The Provincial Government may direct any two or more Magistrates to constitute a bench and invest that bench with special powers.<sup>1</sup>

The powers conferred on a bench of Magistrates are to be exercised by its members collectively. No one member of it can act independently and by himself.<sup>2</sup> The bench once constituted must retain its personnel throughout a case.<sup>3</sup> Where, however, a case is heard by a bench of seven Magistrates, but in the course of hearing two of them drop out, the remaining five can complete the hearing.<sup>4</sup> But if a trial begins before four Magistrates and a fifth one joins in the midst of the trial and takes part in the final decision, the whole trial is bad.<sup>5</sup> Similarly, where a bench is constituted of three Magistrates and one of them is absent for a day in the course of the trial and rejoins on the next day and continues till the end of the trial, still the trial is bad.<sup>6</sup>

<sup>1</sup> *Bhimaboj Sitaram*, (1933) 36 Bom L. R. 314.

<sup>2</sup> *Nuri Sheikh*, (1902) 29 Cal. 483; *Baroda Pravinno Chuckerbutty*, (1878) 2 C. L. R. 348.

<sup>3</sup> *Ram Sinder De v. Rajab Ali*, (1886) 12 Cal. 558.

<sup>4</sup> *Karuppana Nadan v. Chairman, Madura Municipality*, (1898) 21 Mad. 246.

<sup>5</sup> *Subramania Ayyar*, (1913) 38 Mad. 304.

<sup>6</sup> *Dasrath Rai*, (1933) 56 All. 599.

16. The Provincial Government may, or, subject to the control of the Provincial Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects :—

- (a) the classes of cases to be tried ;
- (b) the times and places of sitting ;
- (c) the constitution of the Bench for conducting trials ;
- (d) the mode of settling differences of opinion which may arise between the Magistrates in session.

**COMMENT.**—Outside the presidency-towns, all Magistrates, i.e. those enumerated in ss. 12, 13 and 14, are subordinate to the District Magistrate. Neither the District Magistrate nor any of the other Magistrates is subordinate to the Sessions Judge, except as provided in ss. 123, 193, 195, 408, 436, and 437. It is the District Magistrate alone who can issue orders for the distribution of business among the different Magistrates. This power is, however, personal to the District Magistrate, and cannot be delegated by him to any one else.<sup>1</sup>

17. (1) All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches ; and

(2) Every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

**COMMENT.**—The "subordination" of Magistrates is dealt with here. Sections 435 to 439 speak of "inferiority" of Courts. The two terms need be distinguished. There may be "inferiority" without subordination, but there

<sup>1</sup> *Bal Kishan v. Sipahi Lal*, (1914) 36 All. 468.

cannot be "subordination" without inferiority, as "subordinate" means "inferior in rank." All Magistrates of whatever class are subordinate to the District Magistrate, who is clothed with superiority, in respect not only of his executive, but also judicial, functions.<sup>1</sup> It cannot be supposed that there was any intention on the part of the Legislature to suggest that Courts "subordinate" to the Magistrate of a District are not also inferior to him.<sup>2</sup> The term "inferior" means inferior for purposes of jurisdiction.<sup>3</sup> Presidency Magistrates are subordinate to the Chief Presidency Magistrate.<sup>4</sup>

*D.—Courts of Presidency Magistrates.*

18. (1) The Provincial Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency-towns, and shall appoint one of such persons to be Chief Presidency Magistrate for each town.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the Provincial Government to sit singly, or by any Bench of Presidency Magistrates.

(3) A Presidency Magistrate may be appointed under this section for such term as the Provincial Government may, by general or special order, direct.

(4) The Provincial Government may appoint any person to be an Additional Chief Presidency Magistrate, and such Additional Chief Presidency Magistrate shall have all or any of the powers of a Chief Presidency Magistrate under this Code or under any other law for the time being in force, as the Provincial Government may direct.

19. Any two or more of such persons may (subject to the rules made by the Chief Presidency Magistrate under the power hereinafter conferred) sit together as a Bench.

20. Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

COMMENT.—A Presidency Magistrate has jurisdiction to try an offence committed anywhere within the presidency-town, irrespective of the limits assigned to him.<sup>5</sup>

21. (1) Every Chief Presidency Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by this law or rule in force immediately before this Code

<sup>1</sup> *Pirya Gopal*, (1884) 9 Bom. 109.

<sup>2</sup> *Opendro Nath Ghose v. Dukhin Bewa*, (1886) 12 Cal. 473, F.B.; *Padmanabha*, (1884) 8 Mad. 18, F.B.

<sup>3</sup> *Laskari*, (1885) 7 All. 553, F.B.

<sup>4</sup> *Nageshwar*, (1899) 1 Bom. L. R. 347.

<sup>5</sup> *Khodabux*, (1926) 28 Bom. L. R. 1066.

comes into force are required to be exercised by any Senior or Chief Presidency Magistrate, and may, from time to time, with the previous sanction of the Provincial Government, make rules consistent with this Code to regulate—

(a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(b) the times and places at which Benches of Magistrates shall sit;

(c) the constitution of such Benches;

(d) the mode of settling differences of opinion which may arise between Magistrates in session; and

(e) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) The Provincial Government may, for the purposes of this Code, declare what Presidency Magistrates including Additional Chief Presidency Magistrates are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.

#### *E.—Justices of the Peace.*

22. Every Provincial Government, so far as regards the territories subject to its administration, may, by Justices of the Peace for the notification in the Official Gazette, appoint such persons resident within British India and not being the subjects of any foreign State as it thinks fit to be Justices of the Peace within and for the local area mentioned in such notification.

23. [*Justices of the Peace for the Presidency-towns.*] Repealed by section 4 of Act XII of 1928.

24. (*Present Justices of the Peace.*) Repealed by section 4 of Act XII of 1928.

25. In virtue of their respective offices, the Judges of the High Courts are Justices of the Peace within and for the whole of British India, Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Provincial Government under which they are serving, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

#### *F.—Suspension and Removal.*

26. [*Suspension and Removal of Judges and Magistrates.*] Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.

27. [*Suspension and Removal of Justices of the Peace.*] Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.)

## CHAPTER III.

## POWERS OF COURTS.

*A.—Description of Offences cognizable by each Court.*

THIS chapter deals with powers of Courts to take cognizance of offences. Offences are divided into two groups : (1) offences under the Indian Penal Code ; (2) offences under any other law. Section 28 deals with group (1), and provides that any such offence can be tried by the High Court in presidency-towns, and by the Court of Session in district towns, and by such Magistrate as is competent to do so by col. 8 of the second schedule. Offences falling under group (2) are triable by the Courts specified in the special Acts, and, when not so specified, are triable either by the High Court or by any other Court mentioned in the schedule (s. 29). Next, three special cases are provided for. First, European British subjects are triable by Magistrates of the second or third class only for offences punishable with fine not exceeding Rs. 50 (s. 29A). Secondly, juvenile offenders (under the age of fifteen years) can be tried by a District Magistrate, a Chief Presidency Magistrate or a specially empowered Magistrate, only for offences not punishable with death or transportation for life (s. 29B). Thirdly, in certain areas (some of which are now no longer available) a District Magistrate or a first class Magistrate may be empowered to try any case not punishable with death (s. 30).

Offences under 28. Subject to the other provisions of this Penal Code. Code any offence under the Indian Penal Code may be tried—

- (a) by the High Court, or
- (b) by the Court of Session, or
- (c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

## ILLUSTRATION.

A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

**COMMENT.**—This section is a general section, which, subject to the other provisions of the Code, gives power to the High Court and the Court of Session to try any offence under the Indian Penal Code. The provision as to the other Courts does not cut down or limit the jurisdiction of the High Court or the Court of Session.<sup>1</sup> Even a case which is shown in the schedule as triable by any Magistrate (e.g. s. 147, Indian Penal Code) can be committed to the Court of Session if the offence cannot be adequately punished by the Magistrate.<sup>2</sup>

29. (1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by the High Court or subject as aforesaid by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable:

<sup>1</sup> *Kharga*, (1886) 8 All. 665. Cal. 429.

<sup>2</sup> *Kayemulla v. Mandal*, (1897) 24 All. 111. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

**COMMENT.**—This section merely empowers the High Court, when no Court is mentioned for any offence under any law other than the Indian Penal Code, to try such offences. Reading it with s. 5(2) of the Code, it is clear that this section does not intend that the High Court can take cognizance of the offence straight off and try the accused itself, without following the procedure laid down in the Code.<sup>1</sup>

**29A.** No Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding fifty rupees where the accused is an European British subject who claims to be tried as such.

Trial of European British subjects by second and third class Magistrates.

**COMMENT.**—Except in cases punishable with sentences of fine only not exceeding Rs. 50, European British subjects cannot be tried by second or third class Magistrates; but all first class Magistrates are given power to try European British subjects no matter what their nationality may be.<sup>2</sup>

**29B.** Any offence, other than one punishable with death or transportation for life, committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried<sup>1</sup> by a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the Provincial Government to exercise the powers conferred by section 8, sub-section (1), of the Reformatory Schools Act, 1897, or, in any area in which the said Act has been wholly or in part repealed by any other law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.

**COMMENT.**—This section is not intended to take away the jurisdiction already conferred on Magistrates under s. 28 and the eighth column of the second schedule; it was intended to extend to certain Magistrates the power to try juvenile offenders for certain offences which would otherwise have been triable exclusively by the Court of Session.<sup>3</sup>

1. 'May be tried.'—A juvenile offender under the age of fifteen years charged with an offence, not punishable with death or transportation for life, may be tried by a Chief Presidency Magistrate, a District Magistrate or a specially authorized Magistrate, and is liable to be sentenced to any punishment except death, transportation or imprisonment for a term exceeding seven years (s. 34). The object of the section is to do away with the lengthy procedure of trial in a Court of Session in the case of juvenile offenders.

This section is permissive in its terms. When a juvenile under the age of fifteen years is brought before a Magistrate other than one of those specially referred to in this section, the Magistrate can, if he chooses, either under s. 9 of the Reformatory Schools Act, 1897, or under s. 349 of the Criminal Procedure Code, refer the matter to the District Magistrate with a view to the case being tried by a special Magistrate under this section; and the District Magistrate of his own volition can direct any such case to be tried by a Magistrate having special powers. But if neither of those courses is adopted, the trial Magistrate can deal with the case under the regular provisions of the Code. If the case is one which he is empowered to try

<sup>1</sup> *Harish Chandra v. Kavindra Narain Sinha*, [1937] All. 220.

<sup>2</sup> S. O. R.

<sup>3</sup> *Onkar Nath*, [1937] All. 101.

under the second schedule to the Code, he can try it and pass any sentence authorised by law. This section enables one of the special Magistrates therein referred to to deal with many cases which, apart from that section, could only be tried by a Court of Session ; but the section does not invalidate a trial which would be valid apart from it.<sup>1</sup>

**30.** In the territories respectively administered by the Lieutenant-Governors of the Punjab and the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam, in Sind, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners the Provincial Government may, notwithstanding anything contained in section 29, invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death.

*B.—Sentences which may be passed by Courts of various Classes.*

The Code first enumerates the Courts by which different offences can be tried, and then proceeds to define the limits of sentences which they can pass. These limits show the maximum sentence which a Court can pass ; they have nothing to do with the maximum penalty provided for an offence. The High Court can pass any sentence provided by law ; so also can a Sessions Judge or Additional Sessions Judge, but any sentence of death passed by the latter is subject to confirmation by the High Court. An Assistant Sessions Judge (s. 31) or a Magistrate specially empowered under s. 30 can pass any sentence short of a sentence of death, or transportation or imprisonment exceeding seven years. The powers of Magistrates are much more limited. A Magistrate of the first class can award imprisonment up to two years (inclusive of solitary confinement, if any), a fine of Rs. 1,000 and whipping. A second class Magistrate may impose imprisonment for six months (inclusive of solitary confinement) and a fine of Rs. 200 ; and a third class Magistrate's power is limited to imprisonment for one month and a fine of Rs. 50. It is open to the Magistrate to combine the sentences (s. 32).

There are special rules for cases in which a European British subject is concerned. A Court of Session can sentence him to death, penal servitude, imprisonment or fine ; but a District Magistrate or a Magistrate of the first class can only pass a sentence of imprisonment for two years or a fine of Rs. 1,000 or both (s. 34A).

Sentences which High Courts and Sessions Judges may pass.

**31. (1)** A High Court may pass any sentence authorized by law.

**(2)** A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law ; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

**(3)** An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years.

Sentences which Magistrates may pass.

**32. (1)** The Courts of Magistrates may pass the following sentences, namely :—

<sup>1</sup> *Jalal*, (1954) 36 Bom. L. R. 435 ; *Natvarlal*, (1980) 83 Bom. L. R. 312.



- |  |   |   |
|--|---|---|
| (a) Courts of Presidency Magistrates and of Magistrates of the first class : | } | Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law ;<br>Fine not exceeding one thousand rupees ;<br>Whipping. |
| (b) Courts of Magistrates of the second class :                              | } | Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law ;<br>Fine not exceeding two hundred rupees ;              |
| (c) Courts of Magistrates of the third class :                               | } | Imprisonment for a term not exceeding one month ;<br>Fine not exceeding fifty rupees.   |

(2) The Court or any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

(3) [*Repealed by the Whipping Act (IV of 1909), s. 8 and sch.*]

COMMENT.—“Solitary confinement.” See ss. 73 and 74 of the Indian Penal Code.

The Court has a full discretion to pass a sentence of imprisonment for any period less than the maximum. A sentence of imprisonment till the rising of the Court can be passed.<sup>1</sup>

Power of Magistrates to sentence to imprisonment in default of fine.

33. (1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law<sup>1</sup> in case of such default :

Proviso as to certain cases.

Provided that—

(a) the term is not in excess of the Magistrate's powers under this Code ;

(b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

COMMENT.—Where a fine is imposed on an accused, and it is not paid, the law provides that he can be imprisoned for a further term in addition to the substantive imprisonment awarded if any. This section defines the limits of a Magistrate's power to award imprisonment in default of payment of fine.

There is a limit to the power of Magistrates to award fines (s. 32) ; but the powers of a Sessions Court or the High Court are “unlimited”, though the fines cannot be “excessive” (s. 63, I. P. C.). There are limits placed on imposition of imprisonment for failure to pay a fine. The Penal Code provides, (1) where an offence is punishable with imprisonment and fine, the imprisonment in default of fine can only extend to one-fourth of the maximum imprisonment that can be imposed, and can be rigorous or simple as the substantive imprisonment could be

<sup>1</sup> *Muthu Nadar*, [1945] Mad. 529.

(ss. 65, 66, I. P. C.) ; (2) where the offence is punishable with fine only, the imprisonment in default can only be simple ; and must conform to the following scale : (a) for fines of Rs. 50 and under, imprisonment for two months, (b) fines from Rs. 51 to Rs. 100, imprisonment for four months ; and for fines of Rs. 100 and above, six months' imprisonment (s. 67, I. P. C.). To this limitation the Procedure Code has added one more, that the imprisonment can only extend to one-fourth of the jurisdiction of the Magistrate to award.

1. 'Authorized by law'.—See ss. 63 to 67 of the Indian Penal Code.

**Proviso (b).**—The effect of this proviso is that the trying Magistrate can inflict only one-fourth of the period of imprisonment which he could award for the offence. In other words, the Presidency or first class Magistrate can impose a maximum of six months' imprisonment ; a second class Magistrate, a maximum of one and a half month ; and a third class Magistrate, only a sentence of one-fourth of a month as maximum.<sup>1</sup>

**Sub-section (2).**—A Magistrate can pass the maximum sentence of imprisonment under s. 32 and add to it the sentence in default of payment of fine.

**34.** The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or imprisonment for a term exceeding seven years.

**34A.** Notwithstanding anything contained in sections 31, 32 and 34—  
 Sentences which Courts and Magistrates may pass upon European British subjects. (a) no Court of Session shall pass on any European British subject any sentence other than a sentence of death, penal servitude, or imprisonment with or without fine, or of fine, and

(b) no District Magistrate or other Magistrate of the first class shall pass on any European British subject any sentence other than imprisonment which may extend to two years, or fine which may extend to one thousand rupees, or both.

**35. (1)** When a person is convicted at one trial<sup>1</sup> of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code, sentence<sup>2</sup> him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict ;<sup>3</sup> such punishments, when consisting of imprisonment or transportation to commence the one after the expiration of the other<sup>4</sup> in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.<sup>5</sup>

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :

Maximum term of punishment. Provided as follows :—

<sup>1</sup> *Venkatesagadu*, (1887) 10 Mad. 165.

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years :

(b) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, the aggregate of consecutive sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

[*The Explanation and Illustration were repealed by Act XVIII of 1923, s. 7.*]

COMMENT.—This section relates to the quantum of the punishment that the Court has jurisdiction to pass where the accused is convicted of two or more offences at one trial (ss. 234, 235, 236 and 239). The Court may pass separate sentences, subject to the provisions of s. 71 of the Indian Penal Code, for the several offences of which the Court finds the accused guilty. The aggregate punishment and the length of the period of imprisonment must not exceed the limit fixed by the provisions. Section 71 of the Indian Penal Code provides (1) that where an offence is made up of parts each of which parts is itself an offence the offender can be punished only for one of such offences ; (2) that where an offence falls under two or more definitions of offences or where several acts, each of which is an offence, constitute when combined a different offence, then the punishment could be awarded only for any one of such offences. These are rules of substantive law. The present section is a rule of procedural law.

1. 'At one trial'.—These words are the key-note to the section. The section applies only when more offences than one are tried at the same trial. It is not necessary in order to give separate punishments that the two offences should be distinct ; and a man can be convicted of and separately punished for any two offences, subject to the provisions of s. 71 of the Indian Penal Code.<sup>1</sup>

2. 'May .... sentence'.—The passing of separate sentences is not obligatory : it is only optional.

3. 'Which such Court is competent to inflict'.—These words refer back to s. 32 which defines the powers of different grades of Magistrates to award sentences.

4. 'To commence the one after the expiration of the other,' i.e. consecutively. When nothing is said, one sentence ordinarily operates at the expiration of another.

5. 'Unless the Court directs that such punishments shall run concurrently'.—It is in the option of a Magistrate who passes different sentences on an accused at the trial to order that they shall run all together, i.e., the lesser sentences to be merged in the greater. Any sentence of imprisonment in default of fine has to be in excess of, and not concurrent with, any other sentence of imprisonment to which the prisoner may have been sentenced. The Court has no power to make various sentences of imprisonment in default of payment of fine concurrent with each other.<sup>2</sup> The section authorises the passing of concurrent sentences in cases of sentences of imprisonment.<sup>3</sup>

CASES.—A person who steals a calf and then kills it is guilty of the offences of theft (s. 379, Penal Code) and mischief (s. 429, Penal Code), and is liable to be

<sup>1</sup> *Paw Din*, [1938] Ran. 63.

*Mithoo*, [1942] Kar. 1.

<sup>2</sup> *Channan Singh*, [1940] Lah. 143 ;  
*Konda Moopan*, [1937] Mad. 362 ;

<sup>3</sup> *Yenkataswamy*, [1937] Ran. 366.

convicted and sentenced separately.<sup>1</sup> The accused stole a bullock from the jungle, where it was put to graze by its master, a cartman, and then killed it for food. He was convicted of the offences of theft and mischief at one trial and was sentenced separately for each offence. It was held that the sentences were legal.<sup>2</sup>

*C.—Ordinary and Additional Powers.*

36. All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Provincial Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Provincial Government or the District Magistrate.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Provincial Government.

*D.—Conferment, Continuance and Cancellation of Powers.*

39. (1) In conferring powers under this Code the Provincial Government may, by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

COMMENT.—Where a Magistrate is invested with second class powers on the date he commences the trial of a case, but is invested with first class powers before he finishes it, he is competent to pass sentences on the accused under the first class powers.<sup>3</sup>

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same Provincial Government, he shall, unless the Provincial Government otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is appointed.

COMMENT.—This section refers to the transfer of a Magistrate from one district or area to another, and points to the investing of powers as personal. A Mamlatdar (revenue officer) invested by name with second class powers in a district retains them though he ceases to be a Mamlatdar, his revenue title being matter of description only.<sup>4</sup> But when a Magistrate is transferred from one district to

<sup>1</sup> *Bhawan Surji*, (1935) 38 Bom. L. R. 164, 60 Bom. 627.

<sup>2</sup> *Paw Din*, [1938] Ran. 68.

<sup>3</sup> *Pershad*, (1885) 7 All. 414, F.B.

<sup>4</sup> *Rama*, (1887) Unrep. Cr. C. 322; *Laxminarayan Karki*, (1928) 30 Bom. L. R. 1050.

another, he ceases to have jurisdiction in his district as soon as he relinquishes charge.<sup>1</sup>

41. (1) The Provincial Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

### PART III.

## GENERAL PROVISIONS.

### CHAPTER IV.

#### OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

THIS Chapter deals with the very initial stage of a criminal case. When an offence is committed, and before the trial begins, the police-officer has to find out the accused, to investigate the case, and to ascertain the evidence against him. To enable him to do this effectively and speedily, the law lays obligation on every member of the public to give him assistance (ss. 42, 43); or to furnish him with information (s. 44). It also lays special obligation on village and revenue officers, and owners or occupiers of land, to communicate certain information which is likely to be within their particular reach (s. 45).

Public when to assist Magistrate and police. 42. Every person is bound to assist a Magistrate or police officer reasonably demanding his aid, whether within or without the presidency-towns,—

(a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorized to arrest;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

COMMENT.—A three-fold duty is imposed on members of the public, who are required to assist a Magistrate or police-officer, (1) in the taking or preventing the escape of an offender; or (2) in the prevention or suppression of a breach of the peace; or (3) in the prevention of injury to railway, canal, telegraph or public property. Penalty for omission to do so is provided in s. 187, Indian Penal Code. The demand made on the public should be "reasonable." Obviously the law does not intend that police-officers should have a general power of calling upon members of the public to join them in doing the work for which they are paid, such as tracing out the whereabouts of an absconding criminal or collecting evidence to warrant his conviction.<sup>2</sup>

<sup>1</sup> *Anand Sarup*, (1881) 3 All. 563, F.B.; *Bahwan v. Kishen*, (1896) 19 All. 114.

<sup>2</sup> *Joti Prasad*, (1920) 42 All. 814, 816.

**43.** When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

**Aid to person, other than police-officer, executing warrant.**

**44. (1)** Every person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit any offence punishable under any of the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

**(2)** For the purposes of this section the term "offence" includes any act committed at any place out of British India which would constitute an offence if committed in British India.

**COMMENT.**—This section imposes a duty on every person to give information of certain offences, viz., offences against the State, unlawful assembly, rioting, murder, theft after preparation to cause death, hurt or restraint, robbery, dacoity, mischief by arson and house-trespass. This duty ceases when information has reached the police in some other way.<sup>1</sup> Penalty for breach is provided for by ss. 176 and 202, Indian Penal Code.

**45. (1)** Every village-headman, village accountant, village watchman, village police-officer, owner or occupier of land,<sup>1</sup> and the agent of any such owner or occupier in charge of the management of that land, and every officer employed in the collection of revenue or rent of land on the part of the Crown or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may possess respecting—

**Village-headmen, accountants, land-holders and others bound to report certain matters.**

**(a)** the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent ;

**(b)** the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender ;

**(c)** the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, 144, 145, 147, or 148 of the Indian Penal Code ;

**(d)** the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances or the discovery in or near such village of any corpse or part of a corpse, in circum-

<sup>1</sup> *Sada*, (1893) Unrep. Cr. C. 674 ; *Gopal Singh*, (1892) 20 Cal. 316.

stances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person ;

(e) the commission of, or intention to commit, at any place out of British India near such village any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely, 231, 232, 233, 234, 235, 236, 237, 238, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, 460, 489A, 489B, 489C, and 489D;

(f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Provincial Government, has directed him to communicate information.

(2) in this section—

(i) “village” includes village-lands; and

(ii) the expression “proclaimed offender” includes any person proclaimed as an offender by any Court or authority established or continued by the Central Government or the Crown Representative in any part of India, in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Appointment of village-headmen by District Magistrate or Sub-divisional Magistrate in certain cases for purposes of this section.

(3) Subject to rules in this behalf to be made by the Provincial Government, the District Magistrate or Sub-divisional Magistrate may from time to time appoint one or more persons with his or their consent to perform the duties of a village-headman under this section whether a village-headman has or has not been appointed for that village under any other law.

**COMMENT.**—This section casts a duty on village officers and owners or occupiers of land of immediately giving information about certain offences to the nearest Magistrate or police-officer. As compared with the foregoing section, the duty cast here is absolute and immediate. The duty is rooted in the fact of the responsible position enjoyed by village officers or owners of lands in villages. The offences enumerated are of such a character that they would easily escape the vigilance of the police, unless the local officer rendered them immediate assistance. Penalty for breach of provisions of the section, is provided in s. 176 of the Indian Penal Code.

It must be shown that the person bears the character impressed by the section. *that an offence has in fact been committed, that the person knows the commission of the offence, and that he wilfully omitted to give the information.* If the police have once got the information from any other source, the liability ceases.<sup>1</sup>

1. ‘Owner . . . of land.’—This phrase does not include the owner of a house in a village.<sup>2</sup>

<sup>1</sup> *Sashi Bhusan Chakrabutty*, (1878) 4 Cal. 623; *Gopal Singh*, (1892) 20 Cal. 316; *Pandya Nayak*, (1884) 7 Mad. 436.

<sup>2</sup> *Achutkar*, (1888) 12 Mad. 92; *Hiru Sarua*, (1928) 30 Bom. L. R. 1570, 53 Bom. 184.

## CHAPTER V.

### OF ARREST, ESCAPE AND RETAKING.

#### *A.—Arrest generally.*

**46. (1)** In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

**(2)** If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

**(3)** Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with transportation for life.

**COMMENT.**—This section describes the mode in which arrests are to be made. Sections 46 to 53 contain general provisions about arrests, which may be under a warrant (ss. 75 to 86), or without a warrant (ss. 54-67).

When an arrest is made under a warrant, the police-officer must notify the substance thereof to the person to be arrested, or if so required, must show him the warrant (s. 80), else, the arrest is not legal.<sup>1</sup>

**47.** If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

**48.** If ingress to such place cannot be obtained under section 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

<sup>1</sup> *Amar Nath*, (1883) 5 All. 318.



**49.** Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Power to break open doors and windows for purposes of liberation.

**50.** The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

**51.** Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him.

**52.** Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

**53.** The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

Mode of searching women.

#### *B.—Arrest without Warrant.*

**54. (1)** Any police-officer may, without an order from a Magistrate and without a warrant, arrest—

*first*, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information<sup>1</sup> has been received, or a reasonable suspicion<sup>2</sup> exists of his having been so concerned ;

*secondly*, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking ;

*thirdly*, any person who has been proclaimed as an offender<sup>3</sup> either under this Code or by order of the Provincial Government;

*fourthly*, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing ;

When police may arrest without warrant.

*fifthly*, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ;

*sixthly*, any person reasonably suspected of being a deserter from Her Majesty's Army, Navy or Air Force ; [or from any unit of Indian States Forces declared under the Indian Extradition Act, 1908 (XV of 1908), to be a unit desertion from which is an extradition offence] † ;

*seventhly*, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of British India, which, if committed in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India ;

*eighthly*, any released convict committing a breach of any rule made under section 565, sub-section (3) ;

*ninthly*, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) This section applies also to the police in the town of Calcutta.

COMMENT.—Cases where the police-officer may arrest without a warrant are specified in Schedule II, column 3, of the Code. The section enumerates nine categories under which the police may arrest without warrant. There are other sections in the Code which confer similar powers on the police, viz., s. 55 (arrest of vagabonds, habitual robbers, etc.), s. 57 (refusal to give name and address by a person who has committed a non-cognizable offence in the presence of a police-officer), s. 151 (a person designing to commit a cognizable offence), and s. 401 (3) (a person committing a breach of the condition on which a sentence has been suspended or remitted and the Government have cancelled the suspension or remission).

If a police-officer makes a wrong arrest under a bona fide mistake he is protected.<sup>1</sup> The arrest even if illegal does not affect the trial of the case.<sup>2</sup>

This section is not controlled by s. 56 which requires a written order when the arrest is without a warrant.<sup>3</sup> It is not incumbent upon a superior officer of the police to comply with the formalities mentioned in s. 56.<sup>4</sup>

Clause 1.—1. 'Credible information' or 'reasonable suspicion' upon which an arrest can be made by a police-officer must be based upon definite facts and materials placed before him, which the officer must consider for himself, before he can take any action. The existence of a warrant is equivalent to credible information,<sup>5</sup> and it matters little that the warrant is not entrusted to the police-officer.<sup>6</sup>

<sup>1</sup> *Bhawoo Jivaji v. Mulji Dayal*, (1888) 12 Bom. 377 ; *Dalip*, (1896) 18 All. 246.

<sup>2</sup> *Madho Dhobi*, (1903) 31 Cal. 557 ; *Ravalu Kesigadu*, (1902) 26 Mad. 124.

<sup>3</sup> *Keshavlal Hirralal*, (1936) 88 Bom. L. R. 971, [1937] Bom. 127, dissenting

from *Mohamed Ismail*, (1935) 13 Ran. 754.

<sup>4</sup> *Maharani of Nabha v. Province of Madras*, [1942] Mad. 696.

<sup>5</sup> *Gopal Singh*, (1918) 30 All. 6.

<sup>6</sup> *Ratna Mudali*, (1917) 40 Mad. 1028.

† Added by Ordinance No. XLVIII of 1944, S. 2.

**Clause 2.**—The police-officer must have definite knowledge or at least definite information that a certain person is in possession of an implement of house-breaking before putting that person under arrest. The making of an arrest in the absence of such knowledge or information is illegal and therefore the person has a right of private defence against it, even though an implement of house-breaking may actually be found on searching the person after the arrest.<sup>1</sup>

**Clause 3.—2.** ‘Any person who has been proclaimed as an offender.’  
—The expression “proclaimed offender” has been defined in s. 45(2) (ii).<sup>2</sup>

**Clause 7.**—This clause enables a British police-officer to arrest a person in British India for certain offences committed out of British India; but it does not enable a police-officer of a Native Indian State to arrest such a person in British India.<sup>3</sup>

**Clause 9.**—The word ‘requisition’ is quite general and covers a telephonic message. A police-officer can order the arrest of a person by means of a telephonic message.<sup>4</sup>

**Arrest of vaga- 55. (1)** Any officer in charge of a police  
bonds, habitual station may, in like manner, arrest or cause to be  
robbers, etc. arrested—

(a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(c) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

(2) This section applies also to the police in the town of Calcutta.

**COMMENT.**—This section is intended for suppression of habitual bad characters whom an officer in charge of a police-station suddenly finds within his circle, or about whom he has good cause to fear that they will commit serious harm before there is time to apply to the nearest Magistrate empowered to deal with the case under s. 112.<sup>5</sup> The habit has to be made out; it is not enough that the accused was suspected to be concerned in several offences.<sup>6</sup> This section refers to a police-officer in charge of a police-station whereas the preceding section refers to a police-officer.

1. ‘In like manner’.—These words refer to s. 54, which gives a police-officer power to arrest without an order from a Magistrate and without a warrant in certain specified cases.<sup>7</sup>

<sup>1</sup> *Abdul Hakim*, [1942] All. 35.  
<sup>2</sup> *Mukund Babu Vathe*, (1894) 19 Bom. 72, overruled by this clause.

<sup>3</sup> *Debi*, (1907) 29 All. 377.  
<sup>4</sup> *Maharani of Nabha v. Province of Madras*, [1942] Mad. 696.

<sup>5</sup> *Daulat Singh*, (1861) 14 All. 45, 46.

<sup>6</sup> *Appasami Mudaliq*, (1924) 47 Mad. 442.

<sup>7</sup> *Nepal*, (1918) 35 All. 407.

56. (1) When any officer in charge of a police-station or any police-officer making an investigation under Chapter XIV requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

(2) This section applies also to the police in the town of Calcutta.

COMMENT.—This section points out that where any officer in charge of a police-station requires any officer subordinate to him to arrest without a warrant any person, he may deliver to the officer required to make arrest an order in writing.<sup>1</sup> It may be compared with s. 80 on the one hand and s. 54 on the other. The power which a police-officer has under s. 54 to act on his own initiative and arrest without a warrant a person concerned in a cognizable offence<sup>2</sup> is quite unaffected by this section.<sup>3</sup>

57. (1) When any person who in the presence of a police-officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required :

Provided that, if such person is not resident in British India, the bond shall be secured by a surety or sureties resident in British India.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

COMMENT.—A step little short of arrest is the ascertainment of the name and residence of a person. The section applies only to a person (1) who commits a non-cognizable offence in the presence of a police-officer, or (2) who is accused of committing such offence before such officer. If the name and address are ascertained or otherwise known to the police-officer,<sup>4</sup> the person is to be released on his executing a bond to appear before a Magistrate. If the person does not give his name or residence,<sup>5</sup> or gives a name and residence which are not true, he may be taken into custody pending the ascertainment. He can on no account be detained beyond twenty-four hours, but should be placed before a Magistrate.

<sup>1</sup> *Nepal*, (1913) 35 All. 407, 408.

<sup>2</sup> *Shridhar*, [1941] *Ran.* 148.

<sup>3</sup> *Krishun Mandar*, (1926) 5 Pat. 588.

<sup>4</sup> *Gopal Naidu*, (1922) 46 Mad. 605, F.B.

<sup>5</sup> *Goolab Rasul*, (1908) 5 Bom. L. R. 597.

**58.** A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this Chapter, pursue such person into any place in British India.

**COMMENT.**—Ordinarily a British police-officer is not at liberty to go outside British India and to arrest there an offender without a warrant. If he is pursuing an offender whom he can arrest without warrant, and such offender escapes into any place in British India, he can be pursued and arrested by a British police-officer without warrant. See also s. 66.

**59. (1)** Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

**COMMENT.**—A private person is entitled to arrest any person (1) who in his view<sup>1</sup> commits a non-bailable and cognizable offence, or (2) who is a proclaimed offender. He must without unnecessary delay make over such person to a police-officer, or either take him or cause him to be taken<sup>2</sup> to the nearest police-station. If such person is liable to be arrested under s. 54, he shall be re-arrested by the police-officer. If he is believed to have committed a non-cognizable offence, his name and residence are to be ascertained. If he is believed to have committed no offence, he is to be set at liberty.

This right of arrest arises under the common law which applies to India.<sup>3</sup>

**60.** A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

**61.** No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

<sup>1</sup> *Bolai De*, (1907) 35 Cal. 361.

<sup>2</sup> *Potadu*, (1888) 11 Mad. 480;  
*Johri*, (1901) 23 All. 266; *Parsiddhan*

*Singh*, (1907) 29 All. 575.

<sup>3</sup> *Ramaswami Ayyar*, (1921) 44 Mad. 913.

**COMMENT.**—When a person is arrested under a warrant, s. 81 becomes applicable. When he is arrested without a warrant, the police-officer can keep him in custody for a period not exceeding twenty-four hours. Before the expiration of such period, the arrested person has to be produced before the nearest Magistrate, who can, under s. 167, order his detention for a term not exceeding fifteen days on the whole.<sup>1</sup> Or he can be taken to a Magistrate who has jurisdiction to try the case, and such Magistrate can, under s. 344, remand the person into custody for a term not exceeding fifteen days at a time. The intention of the Legislature is that an accused person should be brought before a Magistrate competent to try or commit with as little delay as possible.<sup>2</sup>

**62.** Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

**63.** No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

**64.** When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

**65.** Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

**66.** If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

**67.** The provisions of sections 47, 48, and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

## CHAPTER VI.

### OF PROCESSES TO COMPEL APPEARANCE.

THE processes to compel appearance are dealt with here. (1) Summons (s. 68), (2) Warrant (s. 75). Whether a summons or warrant should issue in the first instance is determined by col. 4 of sch. 11. Where a summons has failed to secure attendance, it is open to the Court or Magistrate to issue a warrant (s. 90). In

<sup>1</sup> *Engadu*, (1887) 11 Mad. 98.

*Nagendra Nath Chakravarti*, (1923) 51

<sup>2</sup> *Ponrusami*, (1882) 6 Mad. 69; Cal. 402.

cases where a warrant fails to take effect the procedure of (3) proclamation as absconder (s. 88) is taken; and if the absconder is not forthcoming (4) his property is attached and sold (s. 88). One more method of securing attendance is the taking of bond with or without sureties (s. 91).

#### *A.—Summons.*

**68.** (1) Every summons issued by a Court under this Code shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

Form of summons.

(2) Such summons shall be served by a police-officer, or, subject to such rules as the Provincial Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

Summons by whom served.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

**COMMENT.**—The summons is a milder form of process. It is either (a) for appearance (s. 68), or (b) for producing a document or thing (s. 94). A summons for appearance is issued to (1) an accused person (s. 204), or (2) a witness in a summons case [s. 244(2)] or in a warrant case [ss. 252(2), 257(1)], or (3) to a juror or assessor (s. 326).

A summons should be clear and specific in its terms as to the title of the Court, the place at which, the day, and the time of the day when, the attendance of the person summoned is required, and it should go on to say that such person is not to leave the Court without leave, and if the case in which he has been summoned is adjourned, without ascertaining the date to which it is adjourned.<sup>1</sup> For the form of summons, see Sch. V, Form I.

**69.** (1) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Summons how served.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in British India. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

**COMMENT.**—This section deals with personal service. The mere showing to a witness of a summons is not sufficient service. Either the summons should be left with the witness, or should be exhibited to him and a copy of it delivered or tendered.<sup>2</sup> The tender of the copy is sufficient service.<sup>3</sup>

<sup>1</sup> *Ram Saran*, (1882) 5 All. 7.

<sup>2</sup> *Punamalai*, (1882) 5 Mad. 199;

<sup>3</sup> *Karsanlal Danatram*, (1868) 5 B. *Sahdeo Rai*, (1913) 40 All. 577.  
H. C. R. (Cr. C.) 20.

**70.** Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

**COMMENT.**—Where personal service, as provided in s. 69, cannot be effected, the law allows service on the adult male member of the family, or in a presidency-town on a servant residing with the person.

**71.** If service in the manner mentioned in sections 69 and 70 cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

**COMMENT.**—Where personal service cannot be effected under s. 69, and extended service under s. 70 cannot be secured, the law permits a substituted service. The summons can be served by affixing its copy to the outer door of the house in which the person summoned ordinarily resides.

**72. (1)** Where the person summoned is in the active service of the Crown or of a Railway Company the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court under his signature with the endorsement required by that section.

**(2)** Such signature shall be evidence of due service.

**73.** When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

**74. (1)** When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

**(2)** The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.



*B.—Warrant of Arrest.*

**75. (1)** Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or in the case of a Bench of Magistrates, by any member of such Bench ; and shall bear the seal of the Court.

Form of warrant of arrest.

**(2)** Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Continuance of warrant of arrest.

**COMMENT.**—The requisites of a valid warrant can be gathered from this section and the form for the warrant of arrest in Form II, Schedule V. They are :—

1. The warrant must be in writing.
2. It must bear the name and designation of the person who is to execute it.<sup>1</sup>
3. It must give full name and description of the person to be arrested.<sup>2</sup>
4. It must state the offence charged.
5. It must be signed by the presiding officer.
6. It must be sealed.<sup>3</sup>

A warrant once issued remains in force until it is cancelled or executed even though it bears a returnable date.<sup>4</sup>

A Magistrate is, however, only competent to issue a warrant of arrest for production of a person before his own Court, and not before a police-officer.<sup>5</sup>

**76. (1)** Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

Court may direct security to be taken.

- (2)** The endorsement shall state—
- (a) the number of sureties ;
  - (b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound ; and
  - (c) the time at which he is to attend before the Court.

**(3)** Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Recognizance to be forwarded.

**77. (1)** A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when issued by a Presidency Magistrate, shall always be so directed ; but any other Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons ; and such person or persons shall execute the same.

Warrants to whom directed.

<sup>1</sup> *Sheikh Nasur*, (1909) 37 Cal. 122. <sup>2</sup> *James Hastings*, *supra* ; *Mahajan* *James Hastings*, (1872) 9 B. H. *Sheikh*, (1914) 42 Cal. 708.  
C. R. 154 ; *Alter Kaufman*, (1894) 18 <sup>4</sup> *Bindu Anir*, (1928) 7 Pat. 478.  
Bom. 636 ; *Debi Singh*, (1901) 28 Cal. <sup>5</sup> *Jogendra Nath Mukerjee*, (1897) 24 Cal. 320.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or several persons. to one, of them.

**COMMENT.**—Section 83 overrides the provisions of this section. A Presidency Magistrate may forward a warrant, which is to be executed outside the local limits of his jurisdiction, by post to any Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town within whose jurisdiction it is to be executed.<sup>1</sup>

78. (1) A District Magistrate or sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, his land or farm, or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

**COMMENT.**—The terms of this section are express, and no other person except a police-officer is competent to execute a warrant of arrest under an endorsement from another police-officer.<sup>2</sup>

80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

**COMMENT.**—This section presupposes that the officer executing the warrant should have, it in his possession.<sup>3</sup> It requires that the substance of the warrant should be notified to the person to be arrested,<sup>4</sup> or that an opportunity should be given to him by showing him the warrant so that he might read it.<sup>5</sup>

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

82. A warrant of arrest may be executed at any place in British India.

<sup>1</sup> *Sagarmal Khemraj*, (1940) 42 Bom.<sup>2</sup>, *Ganeshi Lal*, (1904) 27 All. 258.  
L. R. 904, [1941] Bom. 16.

<sup>2</sup> *Durga Charan Semadar*, (1900)  
27 Cal. 457, 460.

<sup>3</sup> *Amar Nath*, (1883) 5 All. 318 ;

<sup>4</sup> *Abdul Gafur*, (1895) 23 Cal. 896.

<sup>5</sup> *Satish Chandra Rai v. Jodu Nandan*, (1899) 26 Cal. 748.

**COMMENT.**—A subject of the Nizam charged with a criminal offence in British India cannot be arrested under a warrant issued by a British Magistrate on the lands of the Hyderabad State Railway.<sup>1</sup> Similarly, a person cannot be arrested at the railway station at Gwalior (an Indian State) under a warrant issued by a Magistrate in British India for an offence committed in British India.<sup>2</sup>

Warrants issued by Courts in British Baluchistan can be executed under this section and s. 83 at any place in British India, as British Baluchistan is part of British India. Warrants issued by Courts in the Baluchistan Agency Territories cannot be so executed as the Agency Territories are not part of British India.<sup>3</sup>

**83. (1)** When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town within the local limits of whose jurisdiction it is to be executed.

(2) The Magistrate or District Superintendent or Commissioner to whom such warrant is so forwarded shall endorse his name thereon and, if practicable, cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.

**COMMENT.**—This section contemplates cases where a Magistrate in British India issues a warrant for the arrest of a person in some place in British India outside his jurisdiction. It does not empower the Magistrate of an Indian State, which is outside British India, to issue a warrant for the arrest of a person in British India, even if such Indian State may have adopted the Code as a part of the law of the State.<sup>4</sup>

**84. (1)** When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police-officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed, will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(4) This section applies also to the police in the town of Calcutta.

<sup>1</sup> *Muhammad Yusuf-ud-din*, (1897) 25 Cal. 20, 34 I. A. 187.

<sup>2</sup> *Radha Kishan*, (1920) 1 Lah. 406.

<sup>3</sup> *Karim Bakhsh*, [1941] Kar. 247, F.B.

<sup>4</sup> *Haramohan Patnaik*, (1939) 18 Pat. 121.

**85.** When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner or District Superintendent.

**86. (1)** Such Magistrate or District Superintendent or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court :

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

**(2)** Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

#### *C.—Proclamation and Attachment.*

**87. (1)** If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded<sup>1</sup> or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at specified time not less than thirty days from the date of publishing such proclamation.

**(2)** The proclamation shall be published as follows :—

**(a)** it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides ;

**(b)** it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village ; and

**(c)** a copy thereof shall be affixed to some conspicuous part of the Court-house.

**(3)** A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

**COMMENT.**—The Code has provided ample powers to execute a warrant. But if it remains unexecuted, there are two more remedies : (1) issuing a proclamation (s. 87), and (2) attachment and sale of property (s. 88). While these remedies

are being pursued, the Court may, if the absconder is an accused person, proceed under s. 512. See Forms IV and V of Schedule V.

A proclamation which omits to mention the time within which and the place at which the absconder should present himself to save the sale of his property is a nullity.<sup>1</sup>

The proclamation issued under this section is not equivalent to notice to the public of its contents or legal evidence of the issue of the warrants or orders of arrest.<sup>2</sup>

1. 'Absconded.'—The term is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and its ordinary sense is to hide oneself; and it matters not whether a person departs from a place or remains in it, if he conceals himself; nor does the term apply only to the commencement of the concealment. If a person, having concealed himself before process issues, continues to do so, after it has issued, he absconds.<sup>3</sup>

88. (1) The Court issuing a proclamation under section 87 may at any time<sup>1</sup> order the attachment of any property, property of person moveable or immoveable, or both, belonging to the absconding. proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other moveable property, the attachment under this section shall be made—

- (a) by seizure; or
- (b) by the appointment of a receiver; or
- (c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or
- (d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immoveable, the attachment under this section shall, in the case of land paying revenue to the Provincial Government, be made through the Collector of the district in which the land is situate, and in all other cases—

- (e) by taking possession; or
- (f) by the appointment of a receiver; or
- (g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of livestock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

<sup>1</sup> *Mian Jan v. Abdul*, (1905) 27 All. 572; *Subbarayar*, (1895) 19 Mad. 3.

71 I. A. 88, 46 Bom. L. R. 544.

<sup>2</sup> *Srinivasa Ayyangar*, (1881) 4 Mad. 393, 397.

<sup>3</sup> *Eastwaramurthi Goundan*, (1944)

(6A) If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part :

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(6B) Claims or objections under sub-section (6A) may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate or Chief Presidency Magistrate in accordance with the provisions of sub-section (2), in the Court of such Magistrate.

(6C) Every such claim or objection shall be inquired into by the Court in which it is preferred or made :

Provided that, if it is preferred or made in the Court of a District Magistrate or Chief Presidency Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first or second class or to any Presidency Magistrate, as the case may be, subordinate to him.

(6D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6A) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute ; but subject to the result of such suit, if any, the order shall be conclusive.

(6E) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Provincial Government,<sup>1</sup> but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under sub-section (6A) has been disposed of under that sub-section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

**COMMENT.**— This section penalizes a person who seeks to avoid his arrest under a warrant and against whom a proclamation is issued under s. 87. For disobedience of the proclamation, he incurs liability to be punished under s. 174 of the Indian Penal Code. This provision is devised to put additional pressure upon the absconder by depriving him of his property with a view to compel him to obedience.

1. 'At any time,' i.e., even simultaneously with the proclamation. Both the proclamation under s. 87 and attachment under this section can be issued simultaneously.<sup>1</sup>

<sup>1</sup> *Bhai Lal Chowdhry*, (1902) 20 Cal. 417.

2. 'At the disposal of ... Government.'—This expression is also used in s. 524. It means that the property passes under the absolute control of Government to dispose of, or deal with it, in whatever manner might seem most appropriate and convenient.<sup>1</sup> Property declared to be at the disposal of Government can only be restored by Government.<sup>2</sup> The property, unless it is perishable, is to remain under attachment for six months. At the end of the period, the property is to be sold, and the sale proceeds to await for two years. If within two years the person satisfies the Court as to the reason for his absence he can recover the money; otherwise it stands forfeited to Government.<sup>3</sup> He cannot file a civil suit to recover the property.<sup>4</sup> But a person having claim to such property can enforce it by an independent action in a civil Court so long as the property is not sold and remains in the hands of Government.<sup>5</sup>

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the Provincial Government, under sub-section (7) of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

COMMENT.—This section prescribes a remedy where there is a good and legal publication, but offers no facility for the contesting of the legality of the proclamation.<sup>6</sup> It contemplates and requires proof that the offender did not abscond or conceal himself for the purpose of avoiding arrest, and that he had not such notice of the proclamation as to enable him to attend within the time specified. The proof that the accused person has not absconded should be offered or given within two years of the date of the attachment. It is not enough to show that within that period the accused person appeared voluntarily or was apprehended or brought before the Court.<sup>7</sup>

#### *D.—Other Rules regarding Processes.*

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person in lieu of, or in addition to, summons. other than a juror or assessor, issue, after recording its reasons in writing,<sup>1</sup> a warrant for his arrest—

(a) if, either before the issue of such summons, or after the issue of

<sup>1</sup> Per Prinsep, J., in *Golam Abed v. Toolseeram Bera*, (1883) 9 Cal. 861, 863.

<sup>2</sup> *Government of Bengal v. Meer Surwar*, (1872) 18 W. R. 38; *Gurunath Narayan*, (1924) 26 Bom. L. R. 719.

<sup>3</sup> *Dattaji v. Narayanrao*, (1922) 25 Bom. L. R. 228.

<sup>4</sup> *Dewa Singh v. Fazal Dad*, (1928)

10 Lah. 338.

<sup>5</sup> *Secretary of State v. Ahalyabai*, (1937) 40 Bom. L. R. 422, [1938] Bom. 454; *Reemah Ezekiel v. Province of Bengal*, [1939] 2 Cal. 52.

<sup>6</sup> *Abdullah v. Jitu*, (1900) 22 All. 216, 219.

<sup>7</sup> *Nilkanth*, (1912) 15 Bom. L. R. 175.

the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

**COMMENT.**—This section gives power to issue a warrant in lieu of, or in addition to, a summons. It can be exercised only in two cases: (1) where the Court believes that the person summoned (which includes an accused or a witness, but not a juror or assessor) has absconded or will fail to turn up; and (2) where he has without reasonable cause failed to appear.

1. 'After recording its reasons in writing.'—The recording of reasons in writing is a condition precedent to the exercise of the power. The omission to do so is an irregularity not cured by s. 537.<sup>1</sup> The adoption of a stereotyped printed form (Sch. V, No. VII) is not a sufficient compliance with the imperative language of the section.<sup>2</sup>

**91.** When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.

**92.** When any person who is bound by any bond taken under this Code to appear before a Court, does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Provisions of this Chapter generally applicable to summonses and warrants of arrest.

**93.** The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

*F.—Special Rules regarding processes issued for service or execution outside British India and processes received from outside British India for service or execution within British India.*

**93A. (1)** Where a Court in British India desires that a summons issued by it to an accused person shall be served at any place outside British India within the local limits of the jurisdiction of a Court established or continued by the authority of the Central Government or the Crown Representative in any part of India, it shall send such summons, in duplicate, by post or otherwise, to the presiding officer of that Court to be served.

(2) The provisions of section 74 shall apply in the case of a summons sent for service under this section as if the presiding officer of the Court to whom it was sent were a Magistrate in British India.

<sup>1</sup> *Karuthan Ambalam*, (1914) 38 Mad: 1088.

<sup>2</sup> *Sukheshwar Phukan*, (1911) 38 Cal. 789.



**93B.** Notwithstanding anything contained in section 82, where a Court in British India desires that a warrant issued by it for the arrest of an accused person shall be executed at any place outside British India within the local limits of the jurisdiction of a Court established or continued by the authority of the Central Government or the Crown Representative in any part of India, it may send such warrant, by post or otherwise, to the presiding officer of that Court to be executed.

**93C. (1)** Where a Court has received for service or execution a summons to, or a warrant for the arrest of, an accused person issued by a Court established or continued by the authority of the Central Government or the Crown Representative in any part of India outside British India, it shall cause the same to be served or executed as if it were a summons or warrant received by it from the Court in British India for service or execution within the local limits of its jurisdiction.

(2) Where any warrant of arrest has been so executed the person arrested shall so far as possible be dealt with in accordance with the procedure prescribed by sections 85 and 86.

**COMMENT.**—Sections 93A, 93B, and 93C provide for processes issued for service or execution outside British India, and processes received from outside British India for service or execution in British India. They are added by Act XIV of 1941, s. 2.

## CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER  
MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS  
WRONGLY CONFINED.

### *A.—Summons to produce.*

**94. (1)** Whenever any Court, or in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station considers that the production of any document or other thing<sup>1</sup> is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person<sup>2</sup> in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

**COMMENT.**—The Code has so far dealt with the procuring of personal attendance of a person: it may be secured either by a summons (ss. 68-74), or a warrant (ss. 75-86). It also becomes frequently necessary to require a person to produce a document or thing which may be in his possession or power and which may have a bearing on a case. This can be secured either by a summons (ss. 94, 95), or a warrant (ss. 96-99).

This section may be contrasted with s. 165. Section 165 authorises a police-officer to search the house of the accused for specific documents and things necessary to the conduct of an investigation into an offence. Both sections extend to accused persons.

1. 'Document or other thing.'—The section deals with documents forming the subject of a criminal offence as also with documents which are or can be used only as evidence in support of a prosecution.<sup>1</sup> A solicitor's general lien is no answer to an order of a Magistrate for the production of the documents of his client in his possession.<sup>2</sup> The thing called for must have some relation to, or connection with, the subject matter of the investigation or inquiry, or throw some light on the proceeding, or supply some link in the chain of evidence.<sup>3</sup> When an application is made to a Court, or to a police-officer under this section, the Court is bound to consider whether there is a *prima facie* case for supposing that the documents are relevant, i.e., whether books of a particular type are likely to have a bearing on the case. If the Court thinks they are, then it can order production. But, such an order for production does not involve an obligation on the Court to give inspection of all the books produced to the complainant, though the Court has power to order such inspection. The Court should consider that question at a later stage of the proceeding, either at the trial or inquiry or on a special application, at which it could hear the accused as well as the complainant, and it should order inspection of only those books which the complainant satisfies it are really relevant.<sup>4</sup>

The section does not refer to stolen articles or to any incriminating document or thing in the possession of an accused person.<sup>5</sup>

2. 'Person.'—The term "person" includes an accused person; the Magistrate has, therefore, the power to issue summons to an accused person to produce a document or other thing even when its production might tend to incriminate him.<sup>6</sup>

95. (1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial

<sup>1</sup> *Lakhmidas*, (1908) 5 Bom. L. R. 980.

<sup>2</sup> *Allan E. Ker v. Pramathanath Sarkar*, (1935) 62 Cal. 1087.

<sup>3</sup> *H. H. The Nizam of Hyderabad v. A. M. Jacob*, (1901) 19 Cal. 52, 64; *Pratt*, (1920) 47 Cal. 647; *Lloyds Bank*, (1933) 36 Bom. L. R. 88.

<sup>4</sup> *Hussenhoy Lalji v. Rashid Versi*,

(1941) 43 Bom. L. R. 523, [1941] Bom. 492, F.B., overruling *Central Bank of India v. Shamdasani*, (1937) 39 Bom. L. R. 1187, [1938] Bom. 31, S.B.;

*Graves v. Pitoomal*, [1942] Kar. 292. <sup>5</sup> *Bajrangti Gope*, (1910) 38 Cal. 304, 306.

<sup>6</sup> *Kondareddi*, (1912) 37 Mad. 112; *Bissar Misser*, (1913) 41 Cal. 261.

or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

*B.—Search-warrants.*

96. (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a search-warrant may be requisitioned under section 95, sub-section (1), has been issued. or might be addressed, will not or would not produce the document or thing as required by such summons on requisition, or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities.

COMMENT.—This section contemplates the production of some specified or distinct thing or object which may be deemed essential to the conduct of any inquiry, and to the conviction of the accused person such, for instance, as a bloody knife, a vessel containing poison, a forged document, a piece of stolen property, and so on. It provides for an efficacious procedure for the production of a document or thing, when the summons to produce it has failed or in other cases. A summons or order under s. 94 or a requisition under s. 95 is addressed to the person who has the document or thing; but the warrant under s. 96 is directed to a police-officer. Under the former section (s. 94), any Court or any officer in charge of a police-station can take action; whereas under the latter section, only the Court can proceed.

A search-warrant under this section can be issued only in three cases:—

(1) where the Court has reason to believe that the person summoned to produce a document will not produce it;

(2) where the document or thing is not known to be in the possession of any person;

(3) where a general inspection or search is necessary.

Scope.—This section applies not only when there is an enquiry pending, but also when an enquiry is about to be made.<sup>1</sup>

<sup>1</sup> *Clarke v. Brajendra Kishore Roy* Cal. 953, 14 Bom. L. R. 717.  
*Chowdhury*, (1912) 39 I. A. 163, 39

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Power to re-  
strict warrant.

98. (1). If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

Search of house  
suspected to con-  
tain stolen pro-  
perty, forged do-  
cuments, etc.

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

or, if a District Magistrate, Sub-divisional Magistrate or a Presidency Magistrate, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of any obscene object such as is referred to in section 292 of the Indian Penal Code or that any such obscene objects are kept or deposited in any place,

he may by his warrant authorise any police-officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place, and  
(b) to search the same in manner specified in the warrant, and  
(c) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials or of any such obscene objects as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments or materials or such obscene objects before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials or such obscene objects knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging, or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated, imported or exported.

(2) The provisions of this section with respect to—

(a) counterfeit coin,

(b) coin suspected to be counterfeit, and

(c) instruments or materials for counterfeiting coin, shall, so far as they can be made applicable, apply respectively to—

(a) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878,

(b) pieces of metal suspected to have been so made or to have been so brought into British India or to be intended to be issued in contravention of the former of those Acts, and

(c) instruments or materials for making pieces of metal in contravention of that Act.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

Power to declare certain publications forfeited and to issue search-warrants for the same.

99A. (1) Where—

(a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or

(b) any document, wherever printed, appears to the Provincial Government to contain any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of His Majesty's subjects or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under section 124A or section 153A or section 295A of the Indian Penal Code, the Provincial Government may, by notification in the Official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to His Majesty, and thereupon any police-officer may seize the same wherever found in British India and any Magistrate may by warrant authorize any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.

99B. Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99A, may, within two months from the date of such order, apply to the High Court to set aside such order on the ground

Application to High Court to set aside order of forfeiture.

that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A.

**99C.** Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.  
Hearing by Special Bench.

**99D.** (1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A, set aside the order of forfeiture.  
Order of Special Bench setting aside forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

**99E.** On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order of forfeiture was made.  
Evidence to prove nature or tendency of newspapers.

**99F.** Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.  
Procedure in High Court.

**99G.** No order passed or action taken under section 99A shall be called in question in any Court otherwise than in accordance with the provisions of section 99B.  
Jurisdiction barred.

### *C.—Discovery of Persons wrongfully confined.*

**100.** If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.  
Search for persons wrongfully confined.

**COMMENT.**—This section comes into operation when a person is wrongfully confined (s. 340, Indian Penal Code). The jurisdiction conferred by it on a Magistrate is not so wide, as that conferred by s. 491.<sup>1</sup> Section 552 enables a

<sup>1</sup> *Muktabai*, (1896) Unrep. Cr. C. 839.

Presidency Magistrate or a District Magistrate to compel restoration of abducted women and female children.<sup>1</sup>

*D.—General Provisions relating to Searches.*

**101.** The provisions of sections 48, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98, section 99A or section 100.

**102. (1)** Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed.

**103. (1)** Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

(5) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code.

**COMMENT.**—The object of the section is to ensure that searches are conducted fairly and squarely and that there is no “planting” of articles by the police.

<sup>1</sup> *Abraham v. Mahtabo*, (1889) 16 Cal. 487, 502.

In order to achieve that object the law makes it obligatory, first, that at least two respectable witnesses of the locality should be present. Secondly, the search should be made in their presence; and the list of things seized in the search should be signed by them. Thirdly, the occupant of the place searched or his representative should be permitted to attend during the search, and to have a copy of the list prepared.

When a search has been conducted under this section evidence can be given regarding the things seized in the course of the search and regarding the places in which they are found in addition to the evidence of the list which the law directs to be drawn up relating to the particulars of the property found.<sup>1</sup> If a search was irregular the fact that certain articles were found could nevertheless be proved, and if the possession of such articles was illegal a conviction could follow.<sup>2</sup>

Clause 1.—The witnesses are to be selected by the officer conducting the search.<sup>3</sup>

Clause 2.—The search should be made in the presence of panchas. It is not a sufficient compliance with the provisions of this clause that the panchas should be summoned and kept present outside a building while the search is being carried on within it.<sup>4</sup> Panchas should be examined as witnesses to prove what was found on the search. Mere production of a panchanama is not sufficient.<sup>5</sup>

Clause 3.—The right of presence given by the section applies only to the “occupant of the place searched or some person in his behalf.” The words “occupant of the place” are not intended to cover every person who may happen to be in the place at the time, but that they refer back to the person mentioned in s. 102, “a person residing in, or being in charge of, the place.”<sup>6</sup>

#### *E.—Miscellaneous.*

Power to impound document, etc., produced.

104. Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

### PART IV.

#### PREVENTION OF OFFENCES.

In obedience to the maxim “prevention is better than cure” the Code first of all provides machinery for prevention of offences, before constructing the superstructure for punishment of offences. This subject is dealt with under six heads, to each one of which a Chapter is devoted.

##### 1. Security proceedings (ss. 106-126) for

###### (a) keeping the peace

###### (i) on conviction (s. 106)

###### (ii) on likelihood of breach of the peace (s. 107)

<sup>1</sup> *Solai Naik*, (1910) 34 Mad. 349;

<sup>4</sup> *Rustom Lam*, (1931) 34 Bom. L. R. 267.

<sup>2</sup> *Choa F'hm Htwe*, (1932) 11 Ran.

<sup>5</sup> *Ibid.*

107.

<sup>6</sup> *Ramesh Chandra Banerjee*, (1918)

<sup>3</sup> *Raman*, (1897) 21 Mad. 83, 89.

41 Cal. 350, 377.



- (b) good behaviour, from
  - (i) persons disseminating seditious matter (s. 108)
  - (ii) vagrants and suspects (s. 109)
  - (iii) habitual offenders (s. 110)
- 2. Unlawful assemblies (ss. 127-132).
- 3. Public nuisance (ss. 133-143).
- 4. Urgent cases of nuisance and apprehended danger (s. 144).
- 5. Disputes as to immovable property (ss. 145-148).
- 6. Preventive action of the police :—
  - (1) Prevention of cognizable offences (s. 149).
  - (2) Information of design to commit such offences (s. 150).
  - (3) Arrest of such offenders (s. 151).
  - (4) Prevention of injury to public property (s. 152).
  - (5) Inspection of weights and measures (s. 153).

## CHAPTER VIII.

### OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

#### *A.—Security for keeping the Peace on Conviction.*

THE provisions of this Chapter are preventive in their scope and object, and are aimed at persons who are a danger to the public by reason of the commission by them of certain offences.<sup>1</sup> The preventive Magisterial jurisdiction provided for in this Chapter constitutes a powerful adjunct to executive authority, salutary if used in moderation and over a sufficiently extended period, though harmful if resorted to immoderately and simultaneously in a large number of local areas.

**106. (1)** Whenever any person accused of any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under section 143, section 149, section 153A or section 154 thereof, or of assault or other offence involving a breach of the peace,<sup>1</sup> or of abetting the same, or any person accused of committing criminal intimidation, is convicted of such offence<sup>2</sup> before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class, and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace, such Court may, at the time of passing sentence<sup>3</sup> on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties,<sup>4</sup> for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court including a Court hearing appeals under section 407 or by the High Court when exercising its powers of revision.

<sup>1</sup> *Vaman Sakharam*, (1909) 11 Bom. L. R. 743.

**COMMENT.**—Security can be demanded under this section only when a person is convicted of any one of the following offences, viz. rioting, affray, assault, offence involving a breach of the peace, abetment of any of the above, criminal intimidation.

The object of the section is to prevent breaches of the peace taking place and not merely to follow up breaches of peace which have already taken place.<sup>1</sup> To bring the section into operation there must be a finding that the acts of accused involved a breach of the peace or were done with the evident intention of committing the same, or at all events the evidence must be so clear that, without an express finding, a superior Court is satisfied that such was the case.<sup>2</sup>

1. 'Offence involving a breach of the peace.'—There is a conflict of decisions as to the import of this expression. The Calcutta,<sup>3</sup> the Madras<sup>4</sup> and the Lahore<sup>5</sup> High Courts have held that it means offences in which a breach of the peace is an ingredient. According to the Allahabad<sup>6</sup> and the Bombay<sup>7</sup> High Courts the expression is not necessarily so confined but extends to offences provoking or likely to lead to a breach of the peace, viz. an offence as in common knowledge is ordinarily or very probably the occasion of a breach of the peace. The Allahabad High Court has also held that a 'breach of the peace' does not necessarily mean a breach of the public peace, and the offence of causing hurt to a person involves a breach of the peace, whether it takes place in a private room or in the open street.<sup>8</sup> The Rangoon High Court has held that the expression "offences involving a breach of the peace" in this section means offences in which the commission of a breach of the peace is a necessary ingredient, of an offence the commission of which has actually led to a breach of the peace, irrespective of the party by which that breach is committed.<sup>9</sup>

2. 'Convicted of such offence.'—"Such offence" means offence enumerated in the section. It will be noticed that "such offence," mentioned in the section, has a similarity in that it involves a breach of the peace. This section comes into operation when a person is "convicted" of such offence. The next section (s. 107) deals with the case where there is a likelihood of a breach of the peace.

3. 'Such Court, . . . at the time of passing sentence.'—The order must be passed at the same time when there is a conviction and passing of sentence. If this stage has once passed, then proceedings can be set on foot under s. 107.<sup>10</sup> Where a Magistrate of the second or third class is of the opinion that an accused should be dealt with under this section, he must submit the whole case to a superior Magistrate without passing any part of the sentence himself.<sup>11</sup> A Magistrate of the second class, who is also a Sub-divisional Magistrate, can act under the section.<sup>12</sup>

4. 'Execute a bond . . . with or without sureties.'—The Court may order the bond to be executed with or without sureties. On a security bond for Rs. 500

<sup>1</sup> *Menik Rai*, (1911) 38 All. 771.

<sup>2</sup> *Abdul Ali Chowdhury*, (1915) 43 Cal. 671; *Jib Lal Gir v. Jogmohan Gir*, (1889) 26 Cal. 576.

<sup>3</sup> *Baidya Nath Majumdar v. Nibaran Chunder*, (1902) 30 Cal. 98; *Arun Samanta*, (1902) 30 Cal. 366; *Raj Narain Roy v. Bhagabat Chunder Nandi*, (1908) 35 Cal. 315; *Kali Prasanna Bose*, (1910) 38 Cal. 156; *Ankul Lal Shaha v. Sadhan Chandra Mandal*, [1939] 2 Cal. 261, dissenting from *Abdul Gafur v. Mohammad Mirza*, (1931) 59 Cal. 659.

<sup>4</sup> *Kannookaran Kulkarni*, (1902) 26 Mad. 469; *Muthiah Chetti*, (1905) 29 Mad. 190; *Kuppa Reddy*, (1924)

47 Mad. 846.

<sup>5</sup> *Abdulla*, (1921) 2 Lah. 279.

<sup>6</sup> *Manki Rai*, (1911) 38 All. 771; *Dharam Raj*, (1920) 42 All. 345.

<sup>7</sup> *Sayad Yacoub*, (1918) 43 Bom. 554, 21 Bom. L. R. 270.

<sup>8</sup> *Naziruddin*, (1933) 55 All. 850, *Atmaram*, (1926) 49 All. 181, dissented from.

<sup>9</sup> *Maung Kyi Nyo*, [1940] Ran. 256.

<sup>10</sup> *Ram Adhin*, (1923) 21 A. L. J. R. 839.

<sup>11</sup> *Rohimuddin Howladar*, (1908) 35 Cal. 1098; *Mahmudi Sheikh*, (1894) 21 Cal. 622.

<sup>12</sup> *Raja Singh*, (1915) 37 All. 230.

the petitioner stood surety and himself expressly agreed that he would forfeit Rs. 500 if the principal broke the peace. The principal having defaulted the Magistrate ordered the forfeiture of the amount of the bond against the principal as well as the surety. It was held that the surety was liable to pay the amount specified in the bond in addition to any amount that might be recovered from the principal.<sup>1</sup>

**Sub-section (3).**—The jurisdiction of the appellate Court to act is not dependent on conviction having been by a Magistrate competent to act under the section. An appellate Court can pass an order under this sub-section although the person convicted has been sentenced by a Court inferior to that of a first class Magistrate.<sup>2</sup>

*B.—Security for keeping the Peace in other Cases and security for Good Behaviour.*

**107. (1)** Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is informed<sup>1</sup> that any person is likely<sup>2</sup> to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act<sup>3</sup> that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate if in his opinion there is sufficient ground for proceeding may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

**(2)** Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.

**(3)** When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

**(4)** A Magistrate before whom a person is sent under sub-section (3) may in his discretion detain such person in custody pending further action by himself under this Chapter.

<sup>1</sup> *Sardar Khan*, (1935) 17 Lah. 523.

<sup>2</sup> S. O. R.

**COMMENT.**—Proceedings can be taken under this section against a person if he is (a) likely to commit a breach of the peace or disturb the public tranquillity; or (b) to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. If the breach of the peace has already occurred, then the offending person should be tried and dealt with under the preceding section. Two things are necessary to warrant an action under this section: (1) information should be laid before a Magistrate; and (2) the Magistrate should be satisfied that there was sufficient ground for proceeding. Further, both the person and the place should be within the limits of the Magistrate's jurisdiction: but a Chief Presidency Magistrate or District Magistrate derives jurisdiction, if either the person or the place is within his jurisdiction. A Magistrate not empowered to act under the section may act after recording his reasons in writing and take the person into custody and send him to the Magistrate empowered to act.

A person who ordinarily resides within jurisdiction can be taken to be within jurisdiction even though he is temporarily absent.<sup>1</sup>

1. 'Whenever a Presidency Magistrate... is informed.'—The information must be of a clear and definite kind, directly affecting the person against whom process is issued, and it should disclose tangible facts and details, so that it may afford notice to such person of what he is to come prepared to meet.<sup>2</sup> There must be satisfactory evidence that the person proceeded against has done something, or taken some step that indicates an intention to break the peace or that is likely to occasion a breach of the peace.<sup>3</sup>

2. 'Any person is likely.'—The section presupposes that the person sought to be put under a rule of bail *is* likely (not *was* likely) to commit a breach of the peace or disturb the public tranquillity. There must be a present danger of a breach of the peace; the fact that such a breach is likely to take place at a future time is not enough.<sup>4</sup> If the accused is willing to give security this is sufficient proof.<sup>5</sup>

3. 'Wrongful act.'—It is the doing of a wrongful act which may occasion a breach of the peace that is to be prevented. A party who has clearly the legal right should be allowed to exercise such right without opposition. The party offering opposition to the exercise of a legal right should be bound down.<sup>6</sup> It is a wrongful act to perform religious ceremonies in a place not set apart for the purpose with the deliberate intention of wounding the religious feelings of the neighbours;<sup>7</sup> but the granting of leases to tenants of land not in one's possession is not a wrongful act.<sup>8</sup>

**Sub-section (g).**—When the proceedings are taken before a Chief Presidency or District Magistrate, the person informed against or the place where the breach of the peace is apprehended should be within his jurisdiction. In the case of any other Magistrate both the person informed against and the place where the breach of the peace is apprehended should be within his jurisdiction. Ordinarily a Magis-

<sup>1</sup> *Gajanan*, (1943) Nag. 609.

<sup>2</sup> *Jai Prakash Lal*, (1888) 6 All. 26, 30, F.B.

<sup>3</sup> *Babua*, (1888) 6 All. 132; *Muhammad Yakub*, (1910) 32 All. 571.

<sup>4</sup> *Basdeo*, (1903) 26 All. 190, 193; *Shadi Lal*, (1930) 12 Lah. 457; *Shivram*, (1904) 6 Bom. L. R. 668; *Ram Chandrar Haldar*, (1908) 35 Cal. 674; *Chandabasawa*, (1904) 6 Bom. L. R.

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<sup>5</sup> *Ghariba*, (1928) 46 All. 109; *Nasir Ahmad*, (1927) 50 All. 120; *Kishan Narain*, (1928) 50 All. 599.

<sup>6</sup> *Dindayal Mozumdar*, (1907) 34 Cal. 935; *Khazan Chand*, (1926) 7 Lah. 482; *Thakar Singh*, (1926) 8 Lah. 98.

<sup>7</sup> *Murli Singh*, (1911) 83 All. 775.

<sup>8</sup> *Driver*, (1898) 25 Cal. 798.

trate has no power to issue process to a person not residing within the limits of his district.<sup>1</sup> A temporary residence is enough.<sup>2</sup>

**Sub-section (4).—**It is only when a person is sent to a Magistrate under sub-s. (3) that he derives jurisdiction to remand the person to custody under this sub-section.<sup>3</sup> The sub-section makes an exception to the general rule laid down in s. 496 which enacts that bail shall be given in all cases in which a person is not charged with a non-bailable offence.<sup>4</sup>

**Sections 107 and 110.**—Where the evidence shows that there is an apprehension of anyone using violence towards a particular person or particular persons he ought to be bound over to keep the peace as provided by s. 107, and ought not to be proceeded against under s. 110.<sup>5</sup>

**Sections 107 and 145.**—There is no conflict between the two sections.<sup>6</sup> The words in s. 145 are mandatory, while the language in s. 107 is discretionary.<sup>7</sup> Where a dispute likely to cause a breach of the peace exists concerning possession of land the Magistrate has a discretion to proceed under either of the sections.<sup>8</sup> An order under s. 107 can be passed even after an order under s. 145 has been passed;<sup>9</sup> or if circumstances warrant it, it may be passed in anticipation of an order under s. 145.<sup>1</sup> See s 145, sub-section (10).

**108.** Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Provincial Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, or in any other manner intentionally disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

(a) any seditious matter,<sup>1</sup> that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code, or

(b) any matter the publication of which is punishable under section 153-A<sup>2</sup> of the Indian Penal Code, or

(c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code, such Magistrate, if in his opinion there is sufficient ground for proceeding, may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

<sup>1</sup> *Jai Prakash Lal*, (1883) 6 All. 26, F.B.; *Dinonath Mullick*, (1885) 12 Cal. 133; *Abdul Aziz*, (1891) 14 All. 49; *Hamid Hasan*, (1931) 54 All. 341; *Krishnaji Pandurang*, (1897) 23 Bom. 32; *Syed Ali*, [1939] Nag. 158.

<sup>2</sup> *Shama Charan Chakravarti v. Katu Mundal*, (1897) 24 Cal. 344.

<sup>3</sup> *Chidambaram Pillai*, (1908) 31 Mad. 315.

<sup>4</sup> *Narayanadaswami Naicken*, (1912) 36 Mad. 474.

<sup>5</sup> *Kalku*, (1904) 27 All. 92, 95.

<sup>6</sup> *Abbas*, (1911) 39 Cal. 150, F.B.

<sup>7</sup> *Balajit Singh v. Bhoju Ghose*,

(1907) 35 Cal. 117.

<sup>8</sup> *Belagal Ramachariu*, (1902) 26 Mad. 471; *Kali Kissen Tagore v. Anund Chunder Roy*, (1896) 23 Cal. 557; *Sheoraj Roy v. Chatter Roy*, (1905) 32 Cal. 966; *Ram Baran Singh*, (1906) 28 All. 406; *Thakur Pande*, (1912) 34 All. 449; *Ram Lochan*, (1913) 36 All. 143; *Mallappa*, (1925) 28 Bom. L. R. 488.

<sup>9</sup> *Muthia Moespan*, (1911) 36 Mad. 315.

<sup>10</sup> *Thakur Pande*, sup.; *Baisnab Charan Majhi v. Gatinath Munshi*, (1912) 39 Cal. 469.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, with reference to any matters contained in such publication except by the order or under the authority of the Provincial Government or some officer empowered by the Provincial Government in this behalf.

**COMMENT.**—This and the two following sections specify the three classes of persons from whom security can be demanded for good behaviour. Under this section, proceedings can be taken against a person who commits or is about to commit an offence punishable under s. 124A or s. 183A or criminal intimidation or defamation of a Judge. The object of enabling a Magistrate to take security for good behaviour is for the prevention and not for the punishment of offences.<sup>1</sup> The object is to secure good behaviour in future. The mere record of previous convictions is not sufficient, for it is wrong to use these provisions so as to add to the punishment for past offences.<sup>2</sup>

**Scope.**—The test under this section is whether the person proceeded against has been disseminating seditious matter and whether there is any fear of a repetition of the offence. In each case that is a question of fact which must be determined with reference to the antecedents of the person and other surrounding circumstances.<sup>3</sup> A person comes within the scope of the section if he disseminates matter which reveals an intention to promote feelings of enmity between classes.<sup>4</sup> The section does not apply to a person who is found circulating offending notices on one occasion only.<sup>5</sup>

1. 'Any seditious matter.'—The matter disseminated must be shown to be seditious.<sup>6</sup> The publisher of a seditious pamphlet is liable to be dealt with under the section.<sup>7</sup>

2. 'Any matter the publication of which is punishable under s. 153-A.'—This phrase is parallel to "any seditious matter" in cl. (a). It seems to mean "matter which is the vehicle of an attempt to promote enmity."<sup>8</sup>

Security for good behaviour from vagrants and suspected persons. 109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or

(b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,<sup>1</sup>

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

<sup>1</sup> *Hari Telang*, (1900) 27 Cal. 781, 784.

<sup>2</sup> *Raja*, (1885) 10 Bom. 174.

<sup>3</sup> *Vaman Saktham*, (1909) 11 Bom. L. R. 743.

<sup>4</sup> *P. K. Chakravarti*, (1926) 54 Cal. 59.

<sup>5</sup> *Chitranji Lal*, (1928) 50 All. 854; *Chandra Bhan Gupta*, (1934) 9 Luck.

344; *Swami Sarupa Nand*, (1940) 16 Luck. 260.

<sup>6</sup> *Bal G. Tilak*, (1916) 19 Bom. L. R. 211; *Beni Bhushan Roy*, (1907) 34 Cal. 991.

<sup>7</sup> *Pitre*, (1922) 47 Bom. 438, 25 Bom. L. R. 97.

<sup>8</sup> *P. K. Chakravarti*, (1926) 34 Cal. 59, 68.

**COMMENT.**—The second class of cases in which security for good behaviour can be demanded is that of (a) a suspected person, i.e. one who is taking precautions to conceal his presence with a view to commit any offence; and (b) vagrant, i.e. one who (1) has no ostensible means of subsistence, or (2) cannot give a satisfactory account of himself.<sup>1</sup>

**Clause (a).**—This clause is applicable to a person who, being or coming within the local limits of the jurisdiction of a certain Magistrate, takes precautions to conceal his presence with a view to committing an offence. It is not limited to the more restricted case of a person who, with a similar object, takes precautions to conceal the fact of his presence within the local limits of the jurisdiction of a certain Magistrate.<sup>2</sup> A person, whether he be of good or bad character, who merely shows a disinclination for the society of the police and endeavours to avoid them by running away on their approach does not come within this clause.<sup>3</sup> The words "concealing presence" are very wide. They are sufficient to cover the concealment of bodily presence in a house or grove or under a bridge, etc., but they also are sufficient to cover the case when a man conceals his appearance, e.g. by wearing a mask or covering his face or disguising himself by a uniform or in some other manner.<sup>4</sup> The concealment of presence must be with a view to committing some offence.<sup>5</sup> Impersonation of another will not amount to such concealment.<sup>6</sup> A person cannot be said to conceal his presence within the meaning of this clause if he does not hide behind anything but stands still apparently in the hope that he may be mistaken for an inanimate object by another person happening to turn his eye on him.<sup>7</sup>

1. 'Cannot give a satisfactory account of himself.'—The expression means that suspicion that the accused is living dishonestly attaches to the accused because of his failure to give a satisfactory explanation when called upon to account for his presence in the place where he is found.<sup>8</sup>

**Sections 109 and 110.**—A person cannot be bound over both under ss. 109 and 110.<sup>9</sup>

**110.** Whenever a Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate or a Magistrate of the first class specially empowered in this behalf by the Provincial Government receives information<sup>1</sup> that any person within the local limits of his jurisdiction<sup>2</sup>—

- (a) is by habit<sup>3</sup> a robber, house-breaker, thief, or forger, or
- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or
- (c) habitually protects or harbours thieves<sup>4</sup> or aids, in the concealment or disposal of stolen property, or
- (d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian

<sup>1</sup> *Bhujia*, (1872) Unrep. Cr. C. 63.

<sup>2</sup> *Phuchai*, (1928) 50 All. 909, F.B., overruling *Bhatran*, (1926) 49 All. 240., and *Himayatullah*, (1927) 49 All. 844; *Legal Remembrancer*, *Bengal v. Isab Kharati*, [1938] 2 Cal. 221; *Chhutai*, (1941) 17 Luck. 105.

<sup>3</sup> *Rambirich Ahir*, (1926) 6 Pat. 177, 183.

<sup>4</sup> *Abdul Ghafoor*, [1943] All. 816.

<sup>5</sup> *Satish Chandra Sarkar*, (1912) 39 Cal. 456.

<sup>6</sup> *Kashi Nath Singh*, (1933) 56 All. 814.

<sup>7</sup> *Hafiz Ahesahali*, [1938] Nag. 595.

<sup>8</sup> *Victor*, (1926) 53 Cal. 845.

<sup>9</sup> *Rangasami Pillai*, (1913) 38 Mad. 555.

Penal Code, or under section 489-A, section 489-B, section 489-C, or section 489-D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace,<sup>1</sup> or

(f) is so desperate and dangerous<sup>2</sup> as to render his being at large without security hazardous to the community, such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

**COMMENT.**—The third category of persons from whom security can be taken for good behaviour is habitual offenders and desperate characters. "Habitual offender" means (1) habitual robber, house-breaker, thief or forger; (2) habitual receiver of stolen property; (3) habitual harbourer of thieves or habitual abettor in the concealment or disposal of stolen property; (4) habitual kidnapper, abductor, extortor, cheat or habitually committing mischief, offences relating to coin, stamps and currency notes; (5) habitually committing offences involving a breach of the peace.

The object of the proceedings under this section is prevention and not punishment of offences.<sup>3</sup> It is to be used solely for the purpose of securing future good behaviour; it can never be used for the purpose of punishing past offences.<sup>4</sup>

The Calcutta High Court has held that proceedings under the section ought not to be instituted with a view to bind down persons on an indefinite charge, after prosecutions against them on definite charges under the Penal Code have failed.<sup>5</sup> The Allahabad High Court is, however, of the opinion that where the proceedings follow soon after a discharge or acquittal, it is always necessary to make it clear that the proceeding was not instituted as a means of punishing, in an indirect way, a man, who, the police were convinced, was guilty<sup>6</sup> and shortly afterwards,<sup>7</sup> it distinguished the Calcutta case and held that proceedings under the section can be taken against persons against whom a charge of dacoity has failed.<sup>8</sup> The Lahore High Court has held that where a person has been discharged or acquitted no action can be taken under this section. Because unless a man is proved by habit a robber, housebreaker, thief, or forger, or by habit a receiver of stolen property, etc., this drastic measure cannot be taken against him.<sup>9</sup>

Sections 107, 108, 109 and 110 are known as *batmashi* sections of the Code and they are not intended for furnishing the police with the means of detaining persons against whom a definite charge has been made but has broken down.<sup>10</sup>

1. 'Receives information.'—These words are as wide as possible; there is no limit as to the nature of the information, no limit as to the source from which it may be received.<sup>11</sup>

2. 'Within the...limits of his jurisdiction.'—It is sufficient to give the Magistrate jurisdiction if the evil habits of the accused were practised and evil

<sup>1</sup> *Hari Telang*, (1900) 27 Cal. 781.

<sup>2</sup> *Umbica Proshad*, (1877) 1 C. L. R. 268, 271; *Raja*, (1885) 10 Bom 174, 175.

<sup>3</sup> *Alep Pramanik*, (1906) 11 C. W. N. 413.

<sup>4</sup> *Shyam Lal*, (1909) 6 A. L. J. R. 487, 488.

<sup>5</sup> *Raj Karan*, (1909) 32 All. 55.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Islam-ud-din alias Islaman*, [1939] Lah. 53.

<sup>8</sup> *Bhagwat Prasad*, (1921) 24 O. C. 317; *Jai Singh*, (1930) 6 Luck. 36.

<sup>9</sup> *Mithu Khan*, (1904) 27 All. 172, 173; *Hiranand Ojha*, (1922) 1 Pat. 621.



reputation acquired within the local limits of his jurisdiction. It is not necessary that he must be residing within "the limits of the Magistrate's jurisdiction."<sup>1</sup>

3. 'Habit.'—The word is used in the sense of depravity of character as evidenced by the frequent repetition or commission of the offences mentioned in the section.<sup>2</sup> The evidence of general repute "must be so general and overwhelming as to leave no practical doubt that the accused has been in the habit of committing thefts and robberies or other offences of the kinds specified."<sup>3</sup>

4. 'Harbours thieves.'—This clause does not apply to harbouring of dacoits which is intended to be dealt with under the substantive provision of s. 216A of the Penal Code.<sup>4</sup>

5. 'Offences involving a breach of peace.'—See Comment on s. 106, p. 51.

6. 'Desperate and dangerous.'—This expression means a man who shows a reckless disregard of the safety of the persons or the properties of his neighbours.<sup>5</sup> The word 'neighbours' denotes the members of the community.<sup>6</sup> "Dangerous character" means a person who is so desperate and dangerous as to render his being at large without security hazardous to the community.

111. [*Proviso as to European vagrants.*] Omitted by s. 8 of Act XII of 1923.

112. When a Magistrate acting under section 107, section 108, Order to be section 109 or section 110 deems it necessary to made. require any person to show cause<sup>1</sup> under such section, he shall make an order in writing, setting forth the substance of the information received,<sup>2</sup> the amount of the bond<sup>3</sup> to be executed, the term for which it is to be in force, and the number, character and class of sureties<sup>4</sup> (if any) required.

COMMENT.—Sections 112 to 126A provide the procedure according to which security can be asked either for keeping the peace or for good behaviour, i.e. under circumstances detailed in ss. 107-110. The inquiry is provided in s. 117; and if it results unfavourably to the person, he can be directed to execute a bond (s. 118); but if it ends in his favour, he is to be discharged (s. 119).

Section 112 provides for the passing of a preliminary order. The order in question must be in writing, setting forth the substance of the information received, the amount of the bond, the term of the bond, and the number, character and class of sureties, if any.

1. 'To show cause.'—When a person is called upon to show cause why he should not be required to give security for good behaviour, he must be ready with his evidence when he appears in obedience to the notice. That is the meaning of the expression "to show cause" in law. If he has been unable to bring the evidence with him on account of the shortness of the notice or other reasonable cause, it is his duty, when he appears, to apply at once for summons to the witnesses he proposes to call.<sup>7</sup> The onus of proof, however, lies upon the prosecution to establish circum-

<sup>1</sup> *Durga Halwai*, (1915) 48 Cal. 153; *Manindra Mohan Sanyal*, (1918) 46 Cal. 215; *Rangan*, (1904) 86 Mad. 96; *Bapoo Yellapa*, (1907) 9 Bom. L. R. 244; *Ramjibhai Waghjibhai*, (1912) 14 Bom. L. R. 889; *Munna*, (1916) 39 All. 189; *Sardar Khan*, [1948] Kar. 514.  
<sup>2</sup> *Bhubaneshwar Kuer*, (1925) 6 Pat.

639, 642.

<sup>3</sup> *Manni Lal Awasthi*, (1928) 51 All. 459.

<sup>4</sup> *Wahid Ali Khan*, (1907) 11 C. W. N. 789, 791; *Manindra Mohan Sanyal*, sup.; *Parbaticharan Baishya*, (1984) 61 Cal. 588.

<sup>5</sup> *Parbaticharan Baishya*, ibid.

<sup>6</sup> *Narayan*, (1907) 8 Bom. L. R. 1885, 1886, 32 Bom. 111.

<sup>7</sup> *Sherkhan*, (1898) Unrep. Cr. C.

stances justifying the action of the Magistrate in calling upon persons to furnish security.<sup>1</sup>

2. 'Order in writing, setting forth the substance of the information received.'—The passing of the preliminary order is obligatory.<sup>2</sup> It must be served on the accused.<sup>3</sup> A notice issued under the section must be accompanied by the order mentioned;<sup>4</sup> but the omission to do so is only an irregularity which does not vitiate the proceedings.<sup>5</sup> The order must clearly disclose the substance of the information received by the Magistrate,<sup>6</sup> otherwise it is illegal.<sup>7</sup> The source of information need not be disclosed.<sup>8</sup>

3. 'Amount of the bond.'—In fixing the amount of security the Magistrate should consider the station in life of the person concerned and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment is provided as a protection to society against the perpetration of the crime by the individual, and not as a punishment for a crime committed, and, being made conditional on default of finding security, it is only reasonable and just that the individual should be afforded a fair chance at least of complying with the required condition of security.<sup>9</sup>

4. 'The number, character and class of sureties.'—According to the Allahabad High Court, the object of requiring security to be of good behaviour is to insure that a particular accused person shall be of good behaviour for the time mentioned in the order. It seems, therefore, to be reasonable to expect and require that the sureties to be tendered should not be sureties from such a distance as would make it unlikely that they could exercise any control over the man for whom they were willing to stand sureties.<sup>10</sup> The Calcutta High Court has differed from this view and held that the test of the fitness of a surety is not whether he can supervise the person bound down, but whether he is a person of sufficient substance to warrant his being accepted.<sup>11</sup> The Bombay High Court is of the opinion that the condition that the surety should be able to control the accused is not a desirable condition.<sup>12</sup>

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court:

<sup>1</sup> *Abdul Kadir*, (1886) 9 All. 452.  
*Krishnaswami Thathachari v. Vanamamalai Bhashtakar*, (1906) 30 Mad. 282; *Rameshwar*, (1914) 36 All. 262; *Rajbansi*, (1920) 42 All. 646.

<sup>2</sup> *Nga Hsein*, (1915) 8 B. L. T. 53.  
<sup>4</sup> *Subba Naicken*, (1907) 17 M. L. J. 438.

<sup>5</sup> *Suleman Adam*, (1909) 11 B. L. R. 740; *Muhammad Jafr*, (1881) 3 All. 545, F.B.; *Rajbansi*, supra; *Nihal*, (1926) 49 All. 5.

<sup>6</sup> *Ranga Reddi*, (1919) 43 Mad. 450; *Konad Reddy*, (1917) 41 Mad. 246; *Ram Ghulam*, (1927) 2 Luck. 157; *Ujagar Singh*, (1928) 10 Lah.

155; *Muthuswami Chettiar*, [1940] Mad. 335, F.B.

<sup>7</sup> *Ujagar Singh*, supra.  
<sup>8</sup> *Mithu Khan*, (1904) 27 All. 172.  
<sup>9</sup> (1860) 4 M. H. C. (App.) 46;

*Dedar Sircar*, (1877) 2 Cal. 364, 385; *Rama*, (1892) 16 Bom. 372, 373; *Raza Ali*, (1900) 23 All. 80; *Wasaya*, (1901) P. R. No. 28 of 1901.

<sup>10</sup> *Rahim Bakhsh*, (1898) 20 All. 206, 208; *Nabvu Khan*, (1902) 24 All. 471.

<sup>11</sup> *Adam Sheikh*, (1908) 35 Cal. 400.

<sup>12</sup> *Jiva Natha*, (1914) 16 Bom. L. R. 138.

Provided that whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

**COMMENT.**—Ordinarily a summons should be issued to the person affected. It should be accompanied by a copy of the order.

**Proviso.**—In ordering the arrest of a person the Magistrate must act on recorded information; it is not enough for him to express a belief that such a course is necessary. Not only must he have "reason to fear the commission of a breach of the peace" but "that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person."<sup>1</sup> In no case should a Magistrate issue a warrant of arrest except upon the clearest grounds for belief that unless he issues such warrant a breach of the peace is inevitable.<sup>2</sup>

**115.** Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

**116.** The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

**117. (1)** When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and where the order requires security for good behaviour in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed.

(3) Pending the completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect

<sup>1</sup> *Babua*, (1888) 6 All. 132.

<sup>2</sup> *Daulat Singh*, (1891) 14 All. 45.

of whom the order under section 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded :

Provided that—

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour, and

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 112.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.<sup>1</sup>

(5) Where two or more persons have been associated together<sup>2</sup> in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

COMMENT.—This section provides for inquiry after a notice and order are served upon a person. The form of trial in cases for keeping the peace is the one for summons-cases, i.e. according to ss. 242-249 ; while in cases for good behaviour, the procedure is that provided for warrant-cases, i.e. ss. 252-259. In cases of urgency, the Magistrate has power to bind down the person till the close of the trial. There are two provisos : (1) that a provisional bond for good behaviour can be taken only from a person proceeded against under ss. 108-110 ; and (2) the conditions of the bond exacted under s. 117 can never be more onerous than those demanded under s. 112. Further, in cases under s. 110 evidence of general repute is admissible. A joint trial of two or more persons is permissible.

Sub-section (2).—Inquiry.—The inquiry under this section must necessarily be made.<sup>3</sup> It is a full judicial inquiry, evidence being taken in the presence of the parties charged.<sup>4</sup> The preliminary order passed under ss. 107 and 112 is not in the nature of a rule *nisi* implying that the burden of proving innocence is upon such person. The onus of proof lies upon the prosecution to establish circumstances justifying the action of the Magistrate in calling upon persons to furnish security.<sup>5</sup> A person called upon to furnish security for good behaviour must be given time, as in warrant-cases, to bring his witnesses and have their evidence recorded.<sup>6</sup> A consent to give security does not dispense with the necessity of inquiry, according to the Calcutta High Court ;<sup>7</sup> though, according to the Allahabad High Court,<sup>8</sup> consent may form the basis of an order.

Sub-section (3).—The words “ any offence ” appearing in this sub-section do not mean any particular offence of the nature set out in s. 110, bearing in mind that an order under this sub-section must have reference to the information under s. 110 and the order under s. 112 which follows it.<sup>9</sup>

<sup>1</sup> *Mul Chand*, (1914) 37 All. 30.

R. 1885, 32 Bom. 111.

<sup>2</sup> *Okhl Chunder Biswas*, (1877) 1

<sup>5</sup> *Ram Chandra Haldar*, (1906) 35

C. L. R. 48.

Cal. 674.

<sup>3</sup> *Abdul Kadir*, (1886) 8 All. 452.

<sup>6</sup> *Ghariba*, (1923) 46 All. 109.

<sup>4</sup> *Keramuddin Sarkar*, (1914) 41

<sup>7</sup> *Md. Rahim*, [1943] Kar. 275.

Cal. 806 ; *Narayan*, (1907) 8 Bom. L.

**Sub-section (4).—Evidence of general repute.**—Evidence of general repute may be either evidence as to the general opinion of the neighbourhood or community in which the person concerned lives or to which he belongs or the personal opinion of the witnesses who are examined.

A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of that character. On the other hand, if the state of things is that a body of his fellow-townsmen who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character.<sup>1</sup>

The Calcutta High Court has held that evidence of general repute should be, if at all, acted upon with great caution and scrutiny.<sup>2</sup> The Madras High Court is of the opinion that evidence of general repute is not of much value unless it is propped up by evidence of instances.<sup>3</sup> The Bombay High Court has held that evidence of general repute is admissible and it is not necessary that specific instances should be given.<sup>4</sup> The Allahabad High Court has held that evidence of general repute must necessarily consist largely of 'hearsay evidence,' and such evidence is admissible as evidence of general repute.<sup>5</sup> The Lahore High Court has held that evidence of general repute is admissible. Mere suspicion of complicity in this or that isolated offence is not evidence of general reputation.<sup>6</sup>

1. 'Or otherwise.'—The Bombay High Court<sup>7</sup> has ruled that hearsay evidence amounting to evidence of general repute is admissible. The Allahabad High Court<sup>8</sup> has, however, laid down that evidence of repute should be the evidence of persons who are speaking to matters within their personal knowledge, and not from hearsay, vague and general statements that a man is a habitual offender. The effect of the words "or otherwise" is to render admissible any evidence which would be relevant if the accused person or persons were being tried on a charge of being habitual offenders. The principle of s. 30 of the Indian Evidence Act applies.<sup>9</sup>

2. 'Associated together.'—The phrase applies to persons acting in concert, whether that concert is due to mutual agreement among themselves, or to the obedience to the orders of a common master;<sup>10</sup> or to persons who are confederates or partners as against whom all the evidence is equally applicable.<sup>11</sup>

118. (1) If, upon such inquiry, it is proved that it is necessary Order to give security for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond with or without sureties,<sup>1</sup> the Magistrate shall make an order accordingly :

<sup>1</sup> *Bai Isri Pershad*, (1895) 23 Cal. 621, 628; *Rahu*, (1920) 43 All. 186; *Angnu*, (1922) 45 All. 109; *Po Yin*, (1924) 2 Ran. 686; *Kundan*, (1927) 9 Lah. 133; *Jai Singh*, (1930) 6 Luck. 36.

<sup>2</sup> *Badu Mir*, (1926) 54 Cal. 279.

<sup>3</sup> *Pedda Siva Reddi*, (1881) 3 Mad. 238, 239; *Muthu Pillai*, (1910) 34 Mad. 255, 257.

<sup>4</sup> *Shahukha Mahibukha*, (1907) 9 Bom. L. R. 164; *Raoji Fulchand*, (1903) 6 Bom. L. R. 34, 35; *Bhau*

*Savalram*, (1914) 16 Bom. L. R. 943, 946.

<sup>5</sup> *Kumera*, (1928) 51 All. 275.

<sup>6</sup> *Kundan*, (1927) 9 Lah. 133;

<sup>7</sup> *Kehr Singh*, (1928) 9 Lah. 586.

<sup>8</sup> *Raoji Fulchand*, (1903) 6 Bom. L. R. 34.

<sup>9</sup> *Rup Singh*, (1904) 1 A.L. J. R. 616.

<sup>10</sup> *Sarju*, (1916) 41 All. 231, 234.

<sup>11</sup> *Srikantha Nath Shaha*, (1905) 1 C. L. J. 616, 625.

<sup>12</sup> *Angnu*, supra.

Provided—

*first*, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112 :

*secondly*, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive :

*thirdly*, that, when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

COMMENT.—If the result of the inquiry is unfavourable to the person, he is called upon to execute the bond and furnish sureties. There are three safeguards : (1) the terms and conditions cannot be more onerous than those fixed in the notice : (2) the amount of the bond shall be reasonable ; and (3) if the person is a minor, the bond is to be executed by his guardian.

1. 'Sureties.'—The object of the law is that sureties should be responsible for the good behaviour of the person called upon to provide security.<sup>1</sup>

Proviso 1.—Where the notice issued is for keeping the peace it is not permissible to make the final order for good behaviour.<sup>2</sup>

Amount of suretyship.—In fixing the amount of security the Magistrate should consider the station in life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being able to find security.<sup>3</sup> The amount should not be in excess of that stated in the notice.<sup>4</sup>

119. If, on an inquiry under section 117, it is not proved that it is

Discharge of person informed against. necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

COMMENT.—If the inquiry against the accused results in his favour, the person is allowed to depart; or is discharged if he is in custody.

The term "discharged" is not used in its technical sense, for there is no "charge" framed in security proceedings. It is used in the sense of a permission to depart. It is not competent therefore to a District Magistrate to interfere with a discharge under this section, and order further inquiry.<sup>5</sup> Similarly, a Sessions Judge has no jurisdiction to set aside an order of discharge passed under this section and to order further inquiry.<sup>6</sup>

*C.—Proceedings in all Cases subsequent to Order to furnish Security.*

120. (1) If any person, in respect of whom an order requiring

Commencement of period for which security is required. security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the

<sup>1</sup> *Sheo Buksh*, (1870) 2 N. W. P. 295.

<sup>2</sup> *Driver*, (1898) 25 Cal. 798.

<sup>3</sup> *Rama*, (1892) 18 Bom. 372 ; *Raza Ali*, (1900) 23 All. 80 ; *Wasaya*, (1901) P. R. No. 28 of 1901.

<sup>4</sup> *Belagal Ramacharlur*, (1902) 28 Mad. 471.

<sup>5</sup> *Velu Tayi Annal v. Chidambarelu Pillai*, (1909) 33 Mad. 85 ; *Roshan Singh*, (1923) 46 All. 235 ; *Imam Mondal*, (1900) 27 Cal. 662 ; *Dayanath Takudkar*, (1905) 33 Cal. 8.

<sup>6</sup> *Mahammad Yusuf v. Abdul Majid*, (1930) 53 All. 148.

period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

**121.** The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

**COMMENT.**—Where the bond taken is for good behaviour, it is a breach of the bond if the person is during its term convicted either of abetment or attempt or commission of an offence, punishable with imprisonment, wherever committed.<sup>2</sup> A bond for keeping the peace is broken when the person does some act “which is likely in its consequences to provoke a breach of the peace.”<sup>3</sup> In each case, the surety can be called upon to forfeit his bond. The onus lies on him to show that he is not liable.<sup>4</sup>

**122. (1)** A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person<sup>1</sup> for the purposes of the bond :

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under subsection (1), and the report of such Magistrate (if any) that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing :

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

**COMMENT.**—The Magistrate has power to refuse to accept a surety or to reject a surety already accepted by him or his predecessor. In either case, the ground of refusal should be that the surety is an unfit person, such unfitness being for the purposes of the bond. There should invariably be an inquiry recording evidence before the refusal or rejection ; and before commencing the inquiry, there should be notices both to the surety and the person bound over.<sup>1</sup> The order for

<sup>1</sup> *Sham Sundar Chowdhry*, (1868) *Roy*, (1872) 18 W. R. (Cr.) 63.  
<sup>2</sup> *Beng. L. R. (A. Cr. J.)* 11. <sup>3</sup> *Man. Mohan Lal*, (1896) 21 All.  
<sup>4</sup> *Ananthacharri v. Ananthacharri*, 86.  
 (1881) 2 Mad. 169; *Haran Chunder*

refusal or rejection should be in writing and contain reasons for the order. Where a surety who has once been accepted is rejected, the presence of the person bound over is necessary in Court.

1. 'An unfit person.'—The grounds upon which a Magistrate has power to refuse to accept a surety must be such as are valid and reasonable in the circumstances of each case as it arises.<sup>1</sup> It is no disqualification in a surety that he is a relation.<sup>2</sup> As long as the security is good and sufficient, and the sureties are of a satisfactory character and class, it and they cannot be rejected.<sup>3</sup>

123. (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(3A) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge or the High Court under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.

(3B) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3A) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

<sup>1</sup> *Asiraddi Mandal*, (1914) 41 Cal. 764.

<sup>2</sup> *Shib Singh*, (1902) 25 All. 181.  
<sup>3</sup> *Ganni*, (1875) 7 N. W. P. 249.



Kind of imprisonment. (5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108, be simple and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs.

COMMENT.—Where a person fails to give security, he is detained in prison. The imprisonment awarded for failure to give security for peace (ss. 106, 107) and for good behaviour in cases of sedition (s. 108) is simple; in other cases, that is of vagrants and suspected persons (s. 109), or of habitual offenders, under s. 110, it may be rigorous or simple. The extreme limit of such imprisonment is three years. Where the period of security exceeds one year in duration, the proceedings are to be laid for orders before the Sessions Judge or the High Court.

A person undergoing a sentence of imprisonment cannot be obliged to give security for good behaviour until the period of that imprisonment ends; nor can the order for imprisonment in default be made till then.<sup>1</sup> If, in the meantime, he is convicted of another offence and sentenced to a fresh term of imprisonment, the order shall not be passed, until the expiry of both imprisonments.<sup>2</sup>

Where a person is committed to prison for failure to give security, and he is subsequently sentenced to imprisonment on conviction of an offence, the term of imprisonment cannot be deferred but must commence at once, according to the High Courts of Bombay<sup>3</sup> and Madras<sup>4</sup> and the former Chief Court of the Punjab.<sup>5</sup> The Allahabad High Court<sup>6</sup> is of the contrary opinion.

Sub-section (2).—Where a reference is made to the Sessions Judge, he is bound to give notice to the person concerned and also to hear his pleader if he should be so represented. If the Judge confirms the order of imprisonment he is bound to find special ground, on which the order is passed, having special reference to the section. It is not sufficient to find in general terms that it is for the interest of the community at large that such person should be bound over to be of good behaviour.<sup>7</sup>

Appeal.—There is no provision in the Code allowing an appeal from an order of imprisonment in default of furnishing security passed under this section.<sup>8</sup>

124. (1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security may be released without hazard to the community or to any other person, he may order such person to be discharged.

<sup>1</sup> *Appa Ganu*, (1895) Unrep. Cr. C. 765; *Rangaya Hanmapa*, (1902) 4 Bom. L. R. 934.

<sup>2</sup> *Pandur Khandu*, (1895) Unrep. Cr. C. 774.

<sup>3</sup> *Tulshya Bahiru*, (1898) Unrep. Cr. C. 970; *Kanji Jaysing*, (1902) 5 Bom. L. R. 26; *Durga Bahirav*, (1904)

6 Bom. L. R. 1098; *Arjun Ambo*, (1909) 12 Bom. L. R. 129, 34 Bom. 326; *Vishnu Balkrishna*, (1912) 14

Bom. L. R. 965, 37 Bom. 178.

<sup>4</sup> *Muthukomaran*, (1903) 27 Mad. 525; *Joghi Kannigan*, (1909) 31 Mad. 515.

<sup>5</sup> *Diwan Chand*, (1895) P. R. No. 14 of 1895.

<sup>6</sup> *Tula Khan*, (1908) 30 All. 334.

<sup>7</sup> *Nakhi Lal Jha*, (1900) 27 Cal. 656; *Amir Bala*, (1911) 35 Bom. 271, 18 Bom. L. R. 208.

<sup>8</sup> *Ngq Tun Zu*, (1934) 18 Ran. 287.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts :

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) The Provincial Government may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police-officer without warrant, and shall thereupon be produced before the District Magistrate or Chief Presidency Magistrate.

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.

COMMENT.—Either the Chief Presidency Magistrate or District Magistrate may release a person before the expiration of the period with or without conditions, if it can be done without hazard to the community or any other person. It is open to either of them to reduce the amount or number of sureties, or shorten the period of security. If there is breach of the condition, the order of discharge is liable to be cancelled and the person can be called upon to furnish sureties for the rest of the unexpired term.

Sub-section (3).—This sub-section is intended to enable persons committed to prison under Chapter VIII of the Code to be sent to Industrial Homes and Settlements of the Salvation Army, or to other similar Homes or Settlements, where it may be possible to reform them and make them accustomed to regular work of a kind which may be useful to them after the expiry of their period of detention.<sup>1</sup>

**125.** The Chief Presidency or District Magistrate may at any time for sufficient reasons<sup>1</sup> to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his Court.

**Power of District Magistrate to cancel any bond for keeping the peace or good behaviour.**

**COMMENT.**—This section applies to cases in which a bond has been executed and the District Magistrate or Chief Presidency Magistrate, thinking it no longer necessary that the person should be bound over, cancels the bond, thus discharging him and his surety from all liability.

**1.** 'For sufficient reasons.'—The words should be given their plain natural meaning. A Full Bench of the Calcutta High Court<sup>1</sup> has held that a District Magistrate has power to direct cancellation of a bond on grounds other than that the bond is no longer necessary. A Full Bench of the Madras High Court,<sup>2</sup> following the same view, has held that the District Magistrate can set aside the order passed by a subordinate Magistrate as having been passed on insufficient grounds. The Allahabad High Court<sup>3</sup> has taken a different view and has held that the cancellation can only be on the ground that the bond is no longer necessary. The Patna High Court has followed the Allahabad High Court.<sup>4</sup>

**126.** (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

**126A.** When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) of section 122 or under section 126, sub-section (2), appears or is brought before him, the Magistrate shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

<sup>1</sup> *Nabu Sardar*, (1906) 34 Cal. 1, 8, F.B.; *Dayanath Thakur*, (1909) 37 Cal. 72.

<sup>2</sup> *Mare Gowd*, (1913) 37 Mad. 125, F.B.

<sup>3</sup> *Banarsi Das v. Pertab Singh*, (1912) 35 All. 103; *Sita Ram*, (1917) 39 All. 466; *Shankar Lal*, (1919) 41

All. 351; *Nizam-ud-din Khan v. Muhammad Zia-ul-Nabi Khan*, (1922) 44 All. 614. But see, contra, *Baldeo*

*Singh v. Jugah Kishore*, (1911) 33 All. 619; *Lalji*, (1917) 40 All. 140.

<sup>4</sup> *Durgah Singh v. Anar Dayal Singh*, (1921) 3 P. L. T. 103.

## CHAPTER IX.

## UNLAWFUL ASSEMBLIES.

**127. (1)** Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace,<sup>1</sup> to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

**(2)** This section applies also to the police in the town of Calcutta.

**COMMENT.**—This is a second branch of the preventive provisions of the Code. It deals with an assembly which is unlawful (see s. 141 of the Indian Penal Code), or which is likely to cause a breach of the peace. An assembly of the kind described may be commanded to disperse either by a Magistrate or an officer in charge of a police-station (s. 127). If the assembly shows no disposition to disperse quietly, force may be employed to disperse it; and it is permissible to requisition the aid of any male person (s. 128). Where this is ineffectual, the Magistrate of the highest rank present may cause it to be dispersed by military force (s. 129). The military must use minimum force and cause minimum injury to person and property (s. 130). In cases of emergency, when no Magistrate is present, a Commissioned Army Officer can act on his own initiative; but he should communicate with the nearest Magistrate at the earliest opportunity (s. 131). The officer has also power to take into custody any offending person (s. 131). No person acting under the Chapter is liable to be criminally prosecuted except with the sanction of the Provincial Government (s. 132).

**1. ‘Assembly....likely to cause a disturbance of the public peace.’**—Even a religious assembly (e.g., the Salvation Army) congregated in a public street so as to draw crowds of people is likely to cause a disturbance of the public peace.<sup>1</sup>

**128.** If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer, soldier, sailor or airman in His Majesty’s Army, Navy or Air Force or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

**129.** If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

**130. (1)** When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty’s Army or of any volunteers enrolled under the Indian Volun-

Use of civil force to disperse.

Use of military force.

Duty of officer commanding troops required by Magistrate to disperse assembly.

<sup>1</sup> *Tucker, (1882) 7 Bom. 42.*

teers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

132. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Provincial Government; and—

(a) no Magistrate or police-officer acting under this Chapter in good faith,

(b) no officer acting under section 131 in good faith,

(c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and

(d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey, shall be deemed to have thereby committed an offence:

Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier in His Majesty's Army except with the sanction of the Central Government.

## CHAPTER X.

### PUBLIC NUISANCES.

133. (1) Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order<sup>1</sup> requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,

to remove such obstruction or nuisance ; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation ; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure ; or

to remove or support such tree ; or

to alter the disposal of such substance ; or

to fence such tank, well or excavation, as the case may be ; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order ;

or, if he objects so to do,

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

*Explanation.*—A 'public place' includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

*COMMENT.*—The third branch of preventive jurisdiction is the power of Magistrates to deal with public nuisances. Though not so dangerous as occasions for keeping the peace or good behaviour, nor so emergent as unlawful assemblies,

they are yet sufficiently fraught with potential danger as to warrant a summary action on the part of the magistracy. It is only on proof of urgency, or imminent danger to the public interest that action under this section *et seq* can be taken and that these provisions should not be allowed to be used as a substitute for litigation in civil Courts.<sup>1</sup> The power can be exercised either on receipt of a police report or other information, and arises under the six circumstances enumerated. It results in a conditional order (s. 133). The order can be served as if it were a summons (s. 134). On the service being effected, the person concerned may carry out the order, in which case the proceedings will come to an end [s. 135 (a)]. If he does not, he shows cause against the order or applies to the Magistrate for the appointment of a jury to try whether the order is reasonable and proper [s. 135 (b)]. If the person does not comply with the order and fails to appear before the Magistrate, the order is made absolute (s. 136). If he successfully shows cause, the order is discharged; but if the cause shown is not satisfactory, the order is made absolute (s. 137). There is another line of action open to the person. He may appear before the Magistrate and claim a jury; whereupon, the Magistrate appoints a foreman and one or two jurors and asks the person to appoint an equal number of jurors (s. 138). If the jury find against the person, the order will be made absolute. If they suggest any modification which is accepted by the Magistrate, the order will be made absolute subject to such modification. If the jury find in favour of the person, the proceedings will come to an end (s. 139). If the person disputes the existence of any public right in any way, river, channel or place, the Magistrate will hold a preliminary inquiry, and if he finds the contention good, the question will be left to be determined by a civil Court. If there is no substance in the contention the inquiry will proceed (s. 139A). When an order is made absolute under s. 136, 137, or 139, the person will be called upon to carry it out within a specified time; if he fails to so carry it out, he can be prosecuted under s. 188 of the Indian Penal Code [s. 140 (1)]. It is also open to the Magistrate to carry out the order and recover costs from the defaulter [s. 140 (2)]. If the person fails to appoint jurors or the jury fail to deliver their verdict in time, the Magistrate may himself pass the final order (s. 141). In cases of imminent danger or injury of a serious kind to the public, the Magistrate may forthwith issue an injunction to the public (s. 142). The Magistrate has also the power to order any person not to repeat or continue a public nuisance (s. 143).

The public nuisances which can be redressed under the section fall under six categories:—

- (1) The unlawful obstruction or nuisance to any way, river or channel lawfully used by the public or to a public place;
- (2) the conduct of any trade or occupation or the keeping of any goods or merchandise as injurious to the health or physical comfort of the community;
- (3) the construction of any building or the disposal of any substance as likely to occasion conflagration or explosion;
- (4) a building, tent or structure or a tree as likely to fall and cause injury to persons;
- (5) an unfenced tank, well or excavation, near a public way or place; and
- (6) a dangerous animal requiring destruction, confinement or disposal.

In all proceedings initiated under this section, the Magistrate should bear in mind that he is supposed to be acting purely in the interests of the public, and should be on his guard against any tendency to use this section as a substitute for litigation in the civil Court in order to the settlement of a private dispute.<sup>2</sup>

<sup>1</sup> *Tulsi Ram*, [1939] Lah. 381.

37 All. 26, 28.

<sup>2</sup> *Farzand Ali v. Hakim Ali*, (1914)

The Magistrate's jurisdiction is not ousted because of a bona fide claim of title being raised.<sup>1</sup>

Clause (1).—'Public.'—A class or community residing in a particular locality may come within the term 'public.' The number of persons claiming the right and the nature of right itself will be the criteria on which conclusions may be arrived. The best criterion will be to see whether the right is vested in such a large number of persons as to make them unascertainable and to make them a community or class. A public right does not depend upon the number of individuals who enjoy it. It is, generally speaking, that which must be enjoyed by members of the general unascertained mass of the public.<sup>2</sup>

The Magistrate is forbidden to proceed if the existence of the public right is denied, until the existence of the right claimed has been determined by a civil Court.<sup>3</sup>

The words of the clause seem to imply not only that the way, river or channel must be one of public use, but that the obstruction must be of that public use.<sup>4</sup> It is immaterial whether the obstruction causes practical inconvenience or not.<sup>5</sup>

Clause (2).—Trade or occupation.—This clause deals with occupations or trades which are *in themselves* injurious to health and physical comfort, and has nothing to do with trades which in themselves are innocuous but in the course of which the manager or plier of them commits a public nuisance.<sup>6</sup> Where the engine of a factory was causing noise so as to be a serious nuisance to the people living in the neighbourhood, the Court forbade the working of the engine from 9 P.M. to 5 A.M.<sup>7</sup>

Prostitution.—Prostitutes carrying on their occupation at certain places on a public road can,<sup>8</sup> but prostitutes who live in their houses and behave themselves orderly and quietly cannot,<sup>9</sup> be dealt with under this section.

Clause (4).—Persons protected by this clause are "persons living or carrying on business in the neighbourhood, or passing by." The clause does not apply to persons living actually in the alleged dangerous building. It does not apply to a house standing within its own compound.<sup>10</sup>

Clause (5).—Under this clause, the Magistrate has only the power to require excavation adjacent to a public way to be fenced: he cannot order the person concerned to fill it up<sup>11</sup> or to repair it.<sup>12</sup> He cannot order a person to excavate a tank.<sup>13</sup>

1. 'Conditional order.'—A general<sup>14</sup> or an unconditional<sup>15</sup> order cannot be made. The order should not be vague, indefinite or unambiguous, but should be such as to afford by its terms to the person to whom it is directed what he is to do in order to comply with it.

<sup>1</sup> *Ram Sagar Mandal v. Alek Naskar*, (1922) 49 Cal. 682, F.B.; *Abdul Wahid Khan v. Abdullah Khan*, (1923) 45 All. 656.

<sup>2</sup> *Harnandan Lal*, (1938) 18 Pat. 76.

<sup>3</sup> *Sadasheo Chintaman v. Chintaman Khushalrao*, [1945] Nag. 461.

<sup>4</sup> *Maharana Shri Jaswalsangji*, (1897) 22 Bom. 988, 992.

<sup>5</sup> *Kedar Nath*, (1901) 23 All. 159, 161; *Jagrohen Bharthi v. Madan Pande*, (1926) 6 Pat. 428.

<sup>6</sup> *Bareilo*, (1888) F. R. No. 47 of 1888; *Moti Shah*, (1889) P. R. No. 39 of 1889; *Gokal Chind*, (1919) 1 Lah. 163.

<sup>7</sup> *Raghnandan Prasad*, (1931) 53

All. 708.

<sup>8</sup> *Mi. Nur Jan*, (1899) P. R. No. 2 of 1900.

<sup>9</sup> *Nundo Kumaree Peshagur*, (1875) 24 W. R. (Cr.) 68; *Basanta Baistabi*, (1901) 5 C. W. N. 566.

<sup>10</sup> *Jasoda Nand*, (1898) 20 All. 501.

<sup>11</sup> *Sulemanji Gulam Husein*, (1896) 22 Bom. 714; *Akwal Gurwah*, (1908) 31 Mad. 280.

<sup>12</sup> *Talya*, (1871) Unrep. Cr. C. 50.

<sup>13</sup> *Paul Dass*, (1868) 10 W. R. (Cr.) 51.

<sup>14</sup> *Manekchand*, (1887) Unrep. Cr. C. 342.

<sup>15</sup> *Brojokanto Roy Chowdhuri*, (1888) 9 Cal. 687.



**Sub-section (2).—**The Magistrate's order is not a conclusive determination of the question of title. The party aggrieved may bring a suit under s. 42 of the Specific Relief Act against any one of the public who formally claims to use the land in dispute as a public road.<sup>1</sup>

**Sections 133 and 144.—**The essential difference between these two sections is that the former expressly directs that the injunctive order of the Magistrate should, in cases to which that section applies, be an order *nisi* so to speak, that is an order accompanied by a condition that it is not to operate, if the party shows cause, within a specified time, why the order should not be obeyed; while, on the other hand, s. 144 speaks only of an order absolute, without saying that the party is to be afforded an opportunity for showing cause against the order.<sup>2</sup> Orders under the former section are to be directed to, and served on, persons individually: whereas under the latter section, an order may be directed to the public generally, when frequenting or visiting a particular place, to abstain from a certain act.<sup>3</sup> Where proceedings are taken under s. 133 no order can be passed under s. 144.<sup>4</sup>

**134. (1)** The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

**(2)** If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Provincial Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

**135.** The person against whom such order is made shall—  
 Person to whom order is addressed to obey or show cause or claim jury. (a) perform, within the time and in the manner specified in the order, the act directed thereby; or

(b) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

**COMMENT.—**Three alternatives are open to a person who is served with a notice. First, he may carry out the order; secondly, he may show cause against the order; or, thirdly, he may apply for a jury. These three alternatives are mutually exclusive. It is desirable that reasonable opportunity should be given to the party to show cause under cl. (b) of this section or adduce evidence under s. 137(1).<sup>5</sup>

**136.** If such person does not perform such act or appear and show consequence of cause or apply for the appointment of a jury as his failing to do so. required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code, and the order shall be made absolute.

**Procedure where he appears to show cause.** **137. (1)** If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

<sup>1</sup> *Chuni Lall v. Ram Kishen Sahu*, (1888) 15 Cal. 400, F. B.; *Secretary of State v. Jethabhai Kalidas*, (1892) 17 Bom. 298.

<sup>2</sup> *Harimohan Malo*, (1868) 1 Beng. L. R. (A. Cr. J.) 20.

<sup>3</sup> *Jokhu*, (1886) 8 All. 99.

<sup>4</sup> *Abdul Rahman Mia v. Safar Ali*, (1910) 15 C. W. N. 687.

<sup>5</sup> *Raimohan Karmakar*, (1916) 44 Cal. 61.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

**COMMENT.**—The Magistrate is, under this section, bound to take evidence as in a summons case.<sup>1</sup> The complainant has to start proceedings by adducing evidence and then the party showing cause may produce his own evidence if so advised. When this has been done, but not before, the Magistrate can make the conditional order absolute if he finds sufficient reason for doing so.<sup>2</sup>

Procedure where he claims jury. 138. (1) On receiving an application under section 185 to appoint a jury, the Magistrate shall—

(a) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(c) fix a time within which they are to return their verdict.

(2) The time so fixed may, for good cause shown, be extended by the Magistrate.

**COMMENT.**—The appointment of a jury, when demanded by the person proceeded against, is obligatory on the Magistrate.<sup>3</sup> It is for the Magistrate himself to appoint the foreman and one-half of the jury: he cannot appoint the nominees of the complainant according to the High Courts of Bombay and Calcutta, and the former Chief Court of the Punjab;<sup>4</sup> though according to the Allahabad High Court, it is not illegal for the Magistrate to address any inquiry to the complainant with a view to ascertaining the names of respectable and independent jurors.<sup>5</sup>

139. (1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

(2) In other cases no further proceedings shall be taken under this Chapter.

**COMMENT.**—The duty of the jury is to try whether the Magistrate's order to remove the obstruction is *reasonable and proper*, not whether the way or place obstructed is public or private property.<sup>6</sup>

139A. (1) Where an order is made under section 188 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance of public right is denied.

<sup>1</sup> *Bechan Teli*, (1924) 47 All. 841; *Bhura v. Tara Singh*, (1926) 49 All. 270; *Abdul Karim*, (1927) 49 All. 458; *Tirkha v. Nanak*, (1927) 49 All. 475; *Rameshwar Narayan*, (1938) 41, Bom. L. R. 84.

<sup>2</sup> *Hingu*, (1909) 31 All. 453; *Rai-mohan Karmakar*, (1916) 44 Cal. 61; *Achru*, (1929) 11 Lah. 247.

<sup>3</sup> 2 Weir 63.

<sup>4</sup> *Kothari*, (1928) 31 Bom. L. R. 79; *Kailash Chunder Sen v. Ram Lall Mittra*, (1899) 26 Cal. 869; *Mir Imam Abdul Aziz*, (1897) P. R. No. 4 of 1897.

<sup>5</sup> *Farzand Ali v. Hakim Ali*, (1914) 37 All. 26.

<sup>6</sup> *Chundernath Sein*, (1880) 5 Cal. 875, 876; *Matuk Dhari Tewari v. Hari Madhub Das*, (1904) 31 Cal. 979.

ance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138.

COMMENT.—This section requires, first, that the party against whom a provisional order has been made shall appear before the Magistrate, and deny the existence of the public right in question; secondly, that he shall produce some reliable evidence; and, thirdly, that such evidence shall be legal evidence and shall support the denial. If these three conditions are satisfied, then the Magistrate's jurisdiction to continue the proceeding ceases. He has no jurisdiction to weigh the evidence and decide on which side the balance leans.<sup>1</sup> It is the party moving for proceedings under s. 133 or somebody interested in asserting such right, who has got to go to the civil Court.<sup>2</sup> If the Magistrate finds that there is no reliable evidence in support of the denial of a public right he should proceed as laid down in s. 137 or 138, as the case may require.

The provisions of this section are mandatory.<sup>3</sup>

140. (1) When an order has been made absolute under section 136, section 137 or section 138, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 138 of the Indian Penal Code.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order

<sup>1</sup> *Thakur Sao v. Abdul Aziz*, (1925) 4 Pat. 788.

<sup>2</sup> *Kusha Mandal v. President, Gopalnagar Union Board*, (1934) 61 Cal. 390; *Rozan v. Foujdar*, (1930) 52 All.

592; *Bihari*, [1939] Nag. 600; *Ude Singh v. Mohammada*, (1928) 10 Lah. 151.

<sup>3</sup> *Maktabar Molla v. Golaam Panjaton*, (1929) 57 Cal. 368.

shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the [property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

COMMENT.—A conditional order made under s. 133 cannot be questioned by a civil suit, but there is no such bar to an absolute order under this section being questioned in a civil Court.<sup>1</sup>

The Magistrate cannot compel either party to go to a civil Court.<sup>2</sup>

141. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

COMMENT.—Where a majority of the jurors appointed refuse to return any verdict at all, the Magistrate must proceed to appoint a fresh jury;<sup>3</sup> he cannot straightway make the order absolute,<sup>4</sup> when the person proceeded against applies for a fresh jury.<sup>5</sup>

142. (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

COMMENT.—This section is controlled in its effect by s. 133. In a case of an imminent breach of the peace, not being one of the matters dealt with in that section, a Magistrate acting under this section has no jurisdiction to pass an order of injunction on that account. The imminent danger or injury of a serious kind apprehended to the public must emanate naturally from the matters specified in s. 133.<sup>6</sup>

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Provincial Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

Magistrate may prohibit repetition or continuance of public nuisance.

<sup>1</sup> *Duli Chand*, (1923) 51 All. 1025.

<sup>2</sup> *Chakrapan*, (1929) 52 All. 91.

<sup>3</sup> *Girwar Lal v. Bahsidhar*, (1922) 44 All. 575.

<sup>4</sup> *Shib Chandra Gossain v. Hriday*

*Chandra Dass*, (1908) 12 C. W. N. 1047.

<sup>5</sup> *Kishori Lal Panuri*, (1908) 18

C. W. N. 397.

<sup>6</sup> *Mohammad Ashraf*, (1936) 18 Lah.

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## CHAPTER XI.

## TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

144. (1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate, or of any other Magistrate (not being a Magistrate of the third class) specially empowered by the Provincial Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy<sup>1</sup> is desirable, such Magistrate may, by a written order stating the material facts of the case<sup>2</sup> and served in manner provided by section 184, direct any person to abstain from a certain act<sup>3</sup> or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed, *ex parte*.<sup>4</sup>

(3) An order under this section may be directed to a [particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and shewing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Provincial Government, by notification in the Official Gazette, otherwise directs.

COMMENT.—The fourth branch of preventive jurisdiction deals with cases, urgent in their character, of either nuisance or apprehended danger. The nuisance referred to is public nuisance, and the danger apprehended is disturbance of the public tranquillity, or riot, or affray. The very urgency of the case demands the laying aside of the usual formalities and preliminaries to the making of an order. Cases of ordinary public nuisance, shorn of their urgency, have been dealt with in the foregoing Chapter. Orders under this Chapter can be issued *ex parte*; but they are always temporary in their duration, for they remain in force only for two months.

Whenever it appears to a Magistrate not being a Magistrate of the third class, that (a) immediate prevention of a public nuisance, or (b) speedy remedy of an apprehended danger is desirable, he may issue a written order. The order must set forth the material facts of the case; and be served as a summons. It must either direct any person (a) to abstain from a certain act, or (b) to take certain order with certain property in his possession or under his management. The direction can be given only in the three cases specified in the section, namely, to prevent (1) obstruction, annoyance or injury to any person lawfully employed; (2) danger to human life, health or safety; or (3) disturbance of the public tranquillity, or a riot or an affray. In cases of emergency, the order can be passed *ex parte*. It may either be directed to a person individually or to the public generally when present in a particular place. The Magistrate may rescind or alter the order either *suo motu* or on the application of the person aggrieved. On receipt of the application, the person is entitled to be heard. If the application is rejected, reasons for the rejection should be recorded in writing. The order can at the most remain in force for two months; but in special cases, it can be perpetuated longer by a notification by the Provincial Government in the Official Gazette.

The scheme and the provisions of the section show that it is meant to provide for a temporary remedy to meet an emergency and that it applies to cases where the temporary orders in the nature of things would be appropriate and would afford a reasonably adequate relief under the circumstances of the case.<sup>1</sup> The object of this section is to enable a Magistrate, in cases of emergency, to make an immediate order for the purpose of preventing an imminent breach of the peace, etc.; but it is not intended to relieve him of the duty of making a proper inquiry into the circumstances which make it likely that such breach of the peace, etc., will occur.<sup>2</sup> The extent of the authority possessed by the Magistrate is to suspend the exercise of the right on particular occasions and not to prohibit it absolutely and before the occasion arises which entitles him to act.<sup>3</sup>

1. 'Immediate prevention or speedy remedy.'—The existence of the circumstances, showing the necessity of immediate action, is a condition precedent to the Magistrate having the power to act under this section.<sup>4</sup>

2. 'The material facts of the case.'—The Magistrate must state the material facts in the order.<sup>5</sup>

The Magistrate is only entitled to make a restrictive order preventing a person from doing an act. He cannot make a mandatory order directing a person to do some act.<sup>6</sup>

3. 'Abstain from a certain act.'—The words 'abstain from a certain act' do not empower a Magistrate to make a positive order requiring a person to do particular things.<sup>7</sup> The words "certain act" mean a definite act,<sup>8</sup> e.g. to widen and heighten the doorway of a temple with a view to prevent overcrowding and improve ventilation.<sup>9</sup> An order to abstain from interference with a temple and its

<sup>1</sup> C. J. R., (1919) 22 Bom. L. R. 157, 163.

<sup>2</sup> Abdul v. Lucky Narain Myndui, (1879) 5 Cal. 132, 135.

<sup>3</sup> Sundram, (1882) 6 Mad. 203, 213, F.B.

<sup>4</sup> Kamini Mohan Das Gupta v. Harendra Kumar Sarkar, (1911) 38 Cal. 876.

<sup>5</sup> Karoolal Sajawal v. Shyam Lal,

(1905) 32 Cal. 935, 940; Kamini Mohan Das Gupta v. Harendra Kumar Sarkar, sup.

<sup>6</sup> Kushumkumaree Debee v. Hemnakee Debee, (1933) 68 Cal. 11.

<sup>7</sup> B. N. Sasmal, (1930) 58 Cal. 1037.

<sup>8</sup> Abayeswari Debi v. Sidheswari Debi, (1888) 16 Cal. 80.

<sup>9</sup> Ramchandra Eknath, (1869) 6 B. H. C. (Cr. C.) 36.

property is an order to abstain from a "certain act."<sup>1</sup> So also is an order prescribing different hours of worship at a mosque by different sects of Muslims.<sup>2</sup> No order can be made directing that all music should cease when any procession is passing a certain place of worship;<sup>3</sup> or requiring a person to hold a market on certain days only;<sup>4</sup> or which is by its very nature irrevocable, e.g. an order to cut down a large quantity of trees.<sup>5</sup>

This section is not confined to acts, which, if allowed to be completed, would amount to an offence, but applies also to acts which if completed would furnish grounds for a civil action only. It applies to an infringement of an easement right, as it causes an injury to the owner thereof.<sup>6</sup>

4. Ex parte orders can be passed only under two circumstances: (1) in cases of emergency;<sup>7</sup> and (2) where the circumstances do not admit of personal service.<sup>8</sup> But, ordinarily, an order under the section should not be made, without an opportunity being afforded to the person against whom it is proposed to make it, to show cause why it should not be passed.<sup>9</sup>

Sub-section (3).—This sub-section is an exception to the general rule that the order shall be directed to a particular person. No order can be issued to the public generally except when frequenting or visiting a particular place. An order to the public under this section prohibiting the publication or circulation of false or alarmist reports is bad in law.<sup>10</sup> Where the order was one prohibiting the public generally against the collection of brickbats or other missiles in the village, it was held that the order would be operative to prohibit the owners or occupiers of private houses in the village from collecting such missiles in their houses.<sup>11</sup> The place or locality to which an order under this clause is applied should be so clearly defined as to enable the public to know at once what the prohibited area is. The expression 'particular place' is not confined to a particular restricted place like a market or a park, but includes a part of a town provided that part is sufficiently well-defined with clear boundaries so as to be easily distinguishable, and so that the public may be under no misapprehension or doubt as to what the prohibited area is.<sup>12</sup> A person who is a resident of a "particular place" is a person who frequents or visits it within the meaning of this section.<sup>13</sup> The law does not contemplate the prohibition of the frequenting or visiting of the particular place to which reference is made in this sub-section, but the prohibition of some act on an occasion on which such place is visited or frequented.<sup>14</sup>

An order prohibiting the giving of caste-dinners,<sup>15</sup> or preventing obstruction to catching of stray dogs,<sup>16</sup> or forbidding the conduct of a religious procession attended

<sup>1</sup> *E. V. Ramanuja Jeeyarsvami v. Ramanuja Jeeyar*, (1881) 3 Mad. 354.

<sup>2</sup> *Abdulla Saheb*, (1900) 24 Mad. 262.

<sup>3</sup> *Muthialu Chetti v. Bapun Sahib*, (1880) 2 Mad. 140; *Sundram*, (1883) 6 Mad. 203, F.B.

<sup>4</sup> *Shyamanand Das Paharaj*, (1904) 81 Cal. 990.

<sup>5</sup> *Uttam Chunder Chatterjee v. Ram Chunder Chatterjee*, (1870) 13 W. R. 72.

<sup>6</sup> *Rashid Alldina v. Jivan Das Khemji*, [1942] 1 Cal. 488.

<sup>7</sup> *Joyanti Kumar Mookerjee v. Middleton*, (1900) 27 Cal. 785, 787; *Sundram*, (1883) 6 Mad. 203, 223, F.B.

<sup>8</sup> *Mahammad Mollah*, (1898) 2

C.W.N. 747.

<sup>9</sup> *Tirunarasimha Chari*, (1895) 19 Mad. 18, 20.

<sup>10</sup> *Sat Narain*, [1939] All. 934.

<sup>11</sup> *Bhagwati Prasad*, [1940] All. 662.

<sup>12</sup> *Vasant Khale*, (1934) 36 Bom. L. R. 733, 59 Bom. 27.

<sup>13</sup> *Afaq Hussain Jauhar*, [1941] All. 186.

<sup>14</sup> *Abu Hussain Shaikh*, [1940] 2 Cal. 110.

<sup>15</sup> *Lakmidas Makandas*, (1889) 14 Bom. 165.

<sup>16</sup> *Bhagubhai Dwarkadas*, (1914) 16 Bom. L. R. 684.

by music along public roads,<sup>1</sup> or prohibiting the public from participating in processions,<sup>2</sup> within the limits of a city, are held to be invalid orders.

**Sub-section (6).—**Every order issued under the section is timed to expire at the end of two months. It is not competent to a Magistrate to revive or resuscitate his order from time to time.<sup>3</sup> The continuance of the order for another period can only be justified by temporary emergency. Such a ground must be expressly mentioned and *prima facie* established in the future order.<sup>4</sup> The grant of what in effect is an order for a perpetual injunction is entirely beyond the Magistrate's powers.<sup>5</sup> But the order is not bad if it omits to state the period of duration.<sup>6</sup> The Provincial Government may perpetuate it for any length of time.<sup>7</sup>

**Revisionary powers of High Courts.**—The High Court has jurisdiction to interfere in revision with orders passed under this section.<sup>8</sup>

## CHAPTER XII.

### DISPUTES AS TO IMMOVEABLE PROPERTY.

145. (1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied

Procedure where dispute concerning land, etc., is likely to cause breach of peace.

from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits Inquiry as to possession. of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements

<sup>1</sup> *Sadiuddin*, (1929) Bom. Unrep. : Crim. Revn. No. 162 of 1929, decided on June 13, 1929.

<sup>2</sup> *Belvi*, (1931) 33 Bom. L. R. 673; *Motilal Kabre*, (1931) 33 Bom. L. R. 1178, 55 Bom. 89.

<sup>3</sup> *Govinda Chetti v. Perumal Chetti*, (1913) 33 Mad. 489.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Gopi Mohun Mullick v. Taramoni*

*Chowdhry*, (1879) 5 Cal. 7, F.B.; *Bradley v. Jameson*, (1882) 8 Cal. 580; *Sheodin*, (1887) 10 All. 115.

<sup>6</sup> *Ram Nath Chowdhry*, (1907) 34 Cal. 897, F.B.

<sup>7</sup> *Bhure Mal*, (1928) 45 All. 526.

<sup>8</sup> *Mulhuswami v. Thangamma Ayyar*, (1929) 53 Mad. 320, F.B.; *Tha Ba Thang*, (1934) 12 Ran. 283; *P. T. Chandra*, [1942] Lah. 510.



so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject :

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date :

Provided also, that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed ; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) If the Magistrate decides that one of the parties was or should under the first proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction, and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

COMMENT.—This is the last branch of the preventive jurisdiction of the Magistrate. It relates to disputes regarding possession (s. 145), or right of use

(s. 147), of land or water or its boundaries, which are bound to be very keen and to easily lend themselves to breach of the peace. The disputes do not affect the public or community at large; but between the disputants they are fraught with consequences dangerous in themselves. The business of the Magistrate is not to go into questions of title, but to meet the urgency of the situation by maintaining the party in possession. The Magistrate can, therefore, call upon the parties to put in written statements in support of their claim to actual possession. The order is to be served as a summons. The Magistrate is to peruse the statements, hear the parties and weigh the evidence, in order to ascertain who was in possession at the date of the order. If possession has been wrongfully taken within two months of the order, the person so dispossessed is to be taken as the person in possession. In cases of emergency, the Magistrate can attach the subject of dispute, pending decision. When the subject-matter is liable to speedy and natural decay it may be sold, and the sale-proceeds can be dealt with. If the Magistrate is satisfied that no dispute exists, he can drop the proceedings. If he decides that one party is in possession, that party can be evicted only in due course of law, i.e., by a decree of the civil Court on title. If a party to the proceeding dies, his legal representative can be brought on the record.

The object of the section is merely to prevent a breach of the peace by maintaining one or other of the parties in the possession which the Court finds they had immediately before the dispute.<sup>1</sup> The action which may ultimately be taken is not punitive, but preventive, and for that purpose is provisional only until such time as final or formal adjudication on the rights affected may be obtained and carried into effect by a Court competent to deal with the matter in due course of law. It is thus evident that nothing that could affect the past, present or future rights of the parties, was contemplated in the section. The action to be taken is quasi-executive action, having for its object and justification the prevention of a breach of the public peace. The existence of a dispute likely to cause a breach of the peace is a condition lying at the root of the powers conferred.<sup>2</sup> The object is to take the subject of dispute, so to speak, out of the hands of the disputants, and to constitute one of them, whose possession the law will protect, its custodian until the other has established his right (if any) to possession in a civil Court. The two essentials to taking action are that there should be a dispute likely to cause a breach of the peace, and that the dispute should concern land, etc.<sup>3</sup>

Sub-section (1).—Magistrate.—The inquiry is to be by any of the Magistrates specially named. The Magistrate must act on his own initiative, and not at the instance of the District Magistrate,<sup>4</sup> or the Sessions Judge,<sup>5</sup> or the High Court.<sup>6</sup>

'Satisfied.'—It is essential for the assumption of jurisdiction by the Magistrate that he should be "satisfied", either from a police-report or from other information, that there is a likelihood of a breach of the peace; the mere fact that there is a dispute concerning land is clearly not sufficient by itself to give him jurisdiction.<sup>7</sup>

<sup>1</sup> *Debi Prasad v. Sheodat Rai*, (1907) 30 All. 41, 42.

<sup>2</sup> *Pandurang Govind Pujari*, (1900) 25 Bom. 179, 2 Bom. L. R. 755.

<sup>3</sup> *Krishna Kamini v. Abdul Jubbar*, (1902) 30 Cal. 155, 199 r.s.

<sup>4</sup> *Kailash Chandra Pal v. Kunja Behari Poddar*, (1897) 24 Cal. 391.

<sup>5</sup> *Gobind Chandra Das*, (1898) 20 Cal. 520.

<sup>6</sup> *Manindra Chandra Nandi v. Barada Kanta Chowdhry*, (1902) 30 Cal. 112.

<sup>7</sup> *Kulada Kinkar Roy v. Danesh Mir*, (1905) 33 Cal. 33, 42; *Anesh Mollah v. Ejaharuddi*, (1901) 28 Cal. 446; *H. V. Low and Co., Ltd. v. Maharaja Sir Manindra Chandra Nandi*, (1924) 3 Pat. 809.

**'Police-report.'**—The police-report on which the Magistrate founds the initiatory order should contain a statement of facts from which he may be satisfied of the existence of a likelihood of a breach of the peace.<sup>1</sup>

**'Dispute concerning land.'**—These words are to be understood not quite literally, but as a dispute relating to actual possession.<sup>2</sup> A dispute between two parties one of whom claims joint possession while the other claims exclusive possession over the disputed land and contests the opposite party's right is within the section.<sup>3</sup>

**'Dispute.'**—The essence and basis of the jurisdiction depends upon there being a dispute likely to create a breach of the peace. The term "dispute" means a reasonable dispute, a bona fide dispute, a dispute between parties who have each some semblance of right or supposed right. When the rights of the parties have once been determined by a civil Court, there is no longer a "dispute" within the meaning of the section.<sup>4</sup> The Calcutta High Court has held that "dispute" means actual disagreement existing between the parties at the time of the proceedings even though the question as to the right to possession has already been decided by a civil Court.<sup>5</sup>

The term 'dispute' includes a dispute relating to the right of performing religious service in a public temple where it is likely to cause a breach of the public peace.<sup>6</sup>

**'Likely to cause a breach of the peace.'**—It is not enough that a dispute likely to cause a breach of the peace existed but there must be a likelihood of the breach of the peace,<sup>7</sup> which likelihood must not be too remote.<sup>8</sup> The term "likelihood" does not mean "imminence."<sup>9</sup> It is "this likelihood with the consequent necessity for immediate action"<sup>10</sup> which is the foundation of jurisdiction. The making of an order six months after the report of the police is bad.<sup>11</sup>

**'Within the local limits of his jurisdiction.'**—The "land or water" must be situated entirely within the local limits of the jurisdiction of the Magistrate taking action.<sup>12</sup> If the land or water lies within the jurisdiction of more Magistrates than one, each one of them can take action only with respect to the portion or portions lying within the limits of his jurisdiction,<sup>13</sup> though in doing so he may act upon the police-report made by a police-officer in another district.<sup>14</sup>

**'Order in writing.'**—The order needs necessarily be in writing. It should be addressed to known individuals, and not be in the form of a public proclamation

<sup>1</sup> *Kulada Kinkar Roy v. Danesh Mir*, (1905) 33 Cal. 33, 42; *Dhanput Singh v. Chatterput Singh*, (1893) 20 Cal. 513.

<sup>2</sup> *Agni Kumar Das v. Mantazaddin*, (1928) 56 Cal. 290.

<sup>3</sup> *Nandkeshwar Prasad Sahi v. Sita Saran Sahi*, (1932) 12 Pat. 87; *Jam Bhambo Khan v. Md. Hassan Shah*, [1942] Kar. 120.

<sup>4</sup> *Doulai Koer v. Rameswari Koeri*, (1899) 26 Cal. 325; *Kunja Behari Das v. Khetra Pal Sing*, (1901) 29 Cal. 208; *Ram Baran Singh*, (1906) 28 All. 406.

<sup>5</sup> *Agni Kumar Das v. Mantazaddin*, sup.

<sup>6</sup> *Pandurang Govind*, (1900) 24 Bom. 527, 2 Bom. L. R. 84.

<sup>7</sup> *Kesu v. Moti Mollah*, (1899) 4 C. W. N. 57.

<sup>8</sup> *Uma Churn Santra v. Beni Madhub Roy*, (1880) 7 C. L. R. 352.

<sup>9</sup> *Kulada Kinkar Roy v. Danesh Mir*, (1905) 33 Cal. 33, 34.

<sup>10</sup> *Kumund Narbin Bhōop*, (1878) 4 Cal. 650, 653; *Damodur Biddiyadur Mohapatro v. Syamarund Dey*, (1881) 7 Cal. 385, 387; *Kamal Kutty v. Udayavarma Raja Valia Raja of Chirakkal*, (1912) 36 Mad. 275, 286.

<sup>11</sup> *Anandlil Mukherji v. Sukhchand Mandal*, (1930) 58 Cal. 388.

<sup>12</sup> *Chellapathi Naidu v. Subba Naidu*, (1928) 52 Mad. 241; *Balkram v. Dawalat Singh*, [1944] Nag. 886.

<sup>13</sup> *Korban Molla v. Raja Sri Nath Roy*, (1905) 1 C. L. J. 329.

<sup>14</sup> *Ishdn Chunder Das v. Garth*, (1902) 29 Cal. 885.

on citation.<sup>1</sup> It must, first, set out grounds of the Magistrate's belief,<sup>2</sup> and, secondly, call upon the parties concerned (a) to attend the Court, and (b) to put in statements in writing showing their respective claims to possession. It is meant to perform the same function, as is done by a notice to show cause under ss. 107, 108, 109 and 110, or a conditional order under s. 133. It forms as it were a charge sheet for proceeding under this section. It must be clear, precise and full. The party against whom it is meant to operate must be able to gain from it a complete idea of the case he has to meet.<sup>3</sup>

The order should state the information upon which the Magistrate has proceeded,<sup>4</sup> should specify the property to which it relates,<sup>5</sup> and should be served personally on the parties affected by it.<sup>6</sup>

'Parties concerned in such dispute.'—The phrase indicates all persons claiming to be in possession at the time of the initial order under sub-section (1).<sup>7</sup> It means not merely the actual parties to, but all persons who may be concerned in, the dispute, the object being to prevent a breach of the peace.<sup>8</sup> The phrase includes a person who claims to be in possession of the disputed land, as agent to, or manager for, the actual proprietors who are not resident within the appellate jurisdiction of the High Court;<sup>9</sup> but does not include a receiver appointed by the High Court.<sup>10</sup>

'Actual possession.'—“Actual possession” means actual physical possession, that is, the possession of the person who has his feet on the land, who is ploughing it, sowing it or growing crops on it, entirely irrespective of whether he has title or right to possess it. It is not the same as a right to possession nor does it mean lawful or legal possession. It may be that of a trespasser without any title whatever. The aim and object of the section is the maintenance and preservation of the public peace. Possession means lawful possession and not possession taken by force in defiance of law, nor that of a trespasser and wrong-doer.<sup>11</sup> The intention of the Legislature is obviously to maintain the *status quo*.<sup>12</sup>

Actual physical possession will vary with the subject-matter. The owner of unworked minerals is in actual possession of the same if he is in a position, at any moment, to work them or to permit others to do so.<sup>13</sup>

Joint possession.—The section does not apply where two parties are in joint possession of the property in dispute, and one of them tries to evict the other so as to endanger the public peace;<sup>14</sup> but it applies to a dispute between joint owners

<sup>1</sup> *Kunund Narain Bhoop*, (1878) 4 Cal. 650.

<sup>2</sup> *Nityanand Roy v. Parash Nath Sen*, (1905) 32 Cal. 771.

<sup>3</sup> *Gobind Chandra Das*, (1893) 20 Cal. 520, 526; *Mohesh Sower v. Narain Bag*, (1900) 27 Cal. 981, 982.

<sup>4</sup> *Manik v. Azimuddin*, (1902) 6 C. W. N. 923; *Jagomohan Pal v. Ram Kumar Gope*, (1901) 28 Cal. 416.

<sup>5</sup> *Martin*, (1904) 27 All. 296.

<sup>6</sup> *Ahmed Chowdhry v. Parbati Charan Roy*, (1908) 35 Cal. 774.

<sup>7</sup> *Krishna Kamini v. Abdul Jubbar*, (1902) 30 Cal. 155, F.B.; *Nagarmal v. Rudmal*, [1937] Nag. 268.

<sup>8</sup> *Nathubhai Brijlal*, (1909) 11 Bom. L. R. 377, 379; *Kupphyas*, (1894) 18 Mad. 51; *Laldhari Singh v. Sukdeo Narain Singh*, (1900) 27 Cal. 892.

<sup>9</sup> *Dhondhai Singh v. Follett*, (1903) 31 Cal. 48, F.B.; *Bholanath Singh v. Wood*, (1904) 32 Cal. 287.

<sup>10</sup> *Dunne v. Kumar Chandra Kisore*, (1902) 30 Cal. 593.

<sup>11</sup> *Ambar Ali v. Firan Ali*, (1927) 55 Cal. 826; *Agni Kumar Das v. Mantazaddin*, (1928) 56 Cal. 290.

<sup>12</sup> *Rajendra Narain Roy v. Mohammad Arzumand Khan Chowdhury*, (1905) 1 C. L. J. 381, 338.

<sup>13</sup> *Ranchi Zamindari Company Ltd. v. Maharaja Pralap Udainath Sahi Deo*, (1939) 18 Pat. 215.

<sup>14</sup> *Basanta Kumari Dasi v. Mohesh Chunder Laha*, (1913) 40 Cal. 982; *Beni Narain v. Achraj Nath*, (1883) 5 All. 607; *Dhani Ram v. Bhola Nath*, (1902) P. R. No. 23 of 1902.

as to the right to collect rents<sup>1</sup> or right to possession by the manager.<sup>2</sup>

**Title.**—The Magistrate need not go into the question of title, but should concern himself only with the question of possession. The question of title should in general be decided by the civil Court.<sup>3</sup>

**Sub-section (2).**—‘Land or water’ includes buildings, markets, fisheries, crops and other produce of land and the rents and profits of any such property. It includes the right of ferry.<sup>4</sup> Moveable property as such would not ordinarily come within the purview of the section, unless it is in the shape of crops or other produce of land or rents and profits of the property in dispute. But when the dispute relates not merely to a factory building but also to valuable machinery, coal and other moveables on the premises, the police-officers appointed to take charge of the factory are entitled to retain for the time being the custody of the moveable property, subject to the final order of the Magistrate.<sup>5</sup>

‘Crops or other produce of land.’—This expression means, according to the Calcutta High Court<sup>6</sup> “crops or other produce of land attached to the land, but not crops which have been severed” from the land and stored. It is not, according to the Madras High Court,<sup>7</sup> restricted to crops still on the land. The Chief Court of Sind has held that the word “crop” includes standing or harvested crop. This section can be invoked if the dispute relates to a gathered crop.<sup>8</sup>

‘Produce’ includes also a finished article or a semi-finished article made from raw material, e.g., molasses.<sup>9</sup>

**Sub-section (3).**—This sub-section lays down two essentials: (1) service of the order in the manner of a summons on the person affected; and (2) publication of the order at a conspicuous place near the subject of dispute. If either is left out, the proceedings are nullified,<sup>10</sup> but if the parties are otherwise present, non-compliance of the above does not invalidate the proceedings.<sup>11</sup>

**Sub-section (4).**—Inquiry.—It is noticeable that although the Legislature in cases for the taking of security for keeping the peace and for good behaviour, as also in cases of public nuisances, has expressly provided that in some specified instances the procedure prescribed for summons-cases and in others the procedure prescribed for warrant-cases, shall be followed, yet the Legislature has deliberately omitted to extend the procedure for summons-cases or warrant-cases to proceedings under this section. The Code contemplates a determination of the question of possession without any reference to the merits of the respective claims of the disputing parties to a right to possess the subject of dispute. The question of possession, moreover, has to be determined with reference to a specified point of time, namely, the date of the initial order, or in the case of forcible dispossession, a date within two months next preceding such order. The Legislature could hardly have contemplated an elaborate and protracted investigation, the result of which might, in many

<sup>1</sup> *Sri Mohan Thakur v. Narsing Mohan Thakur*, (1899) 27 Cal. 259.

<sup>2</sup> *Bhaskari Kasavarayudu v. Bhaskaram Chalapatirayudu*, (1908) 31 Mad. 318.

<sup>3</sup> *Mallappa*, (1925) 28 Bom. L. R. 488.

<sup>4</sup> *Hurbullubh Narain Singh v. Luchmeswar Prosad Singh*, (1898) 26 Cal. 188.

<sup>5</sup> *Shrimati Prem Kaur v. Benarsi Das*, (1933) 14 Lah. 615.

<sup>6</sup> *Ramzan Ali v. Janardhan Singh*,

(1902) 30 Cal. 110.

<sup>7</sup> *Krishnasami Aiyar*, (1900) 2 Weir 108.

<sup>8</sup> *Kimatrai*, [1945] Kar. 72.

<sup>9</sup> *Lala Nihal Chand v. Lala Jai Ram Dass*, (1929) 5 Luck. 442.

<sup>10</sup> *Janu Manjhi v. Mantruddin*, (1904) 8 C. W. N. 590.

<sup>11</sup> *Sukh Lal Sheikh v. Tara Chand Ta*, (1905) 33 Cal. 68, 78, F.B.; *Debi Prasad v. Sheodat Rai*, (1907) 30 All. 41; *Chinnappudayan*, (1907) 30 Mad. 548.

instances, be to defeat the very object in view, namely, an effective prevention of a breach of the peace.<sup>1</sup> The inquiry means taking of evidence in the case. It does not mean local inspection and inquiry from persons present at the time.<sup>2</sup> Where the Magistrate is satisfied that there is no likelihood of a breach of the peace, he ought to drop the proceedings.<sup>3</sup> He is not bound to give the parties an opportunity to establish the contrary,<sup>4</sup> or even to take evidence.<sup>5</sup>

'Without reference to the merits of the claims.'—The Magistrate is solely concerned with "the fact of actual possession." Evidence of title is admissible only to enable him to decide the question of actual possession, but proof of title is not proof of actual possession.<sup>6</sup>

'Hear the parties.'—The expression means hear the evidence of the parties and arguments of counsel or pleaders appearing on their behalf, or arguments addressed by themselves.<sup>7</sup>

'At the date of the order before mentioned.'—The point of time at which possession is to be regarded is the date of the order.

**Proviso 1.**—This proviso merely recites a circumstance under which presumption of possession may be made in favour of one of the disputants. It does not debar the Magistrate from deciding the question of possession on other grounds also.<sup>8</sup> The proviso is only permissive and not mandatory and the Magistrate is not bound to treat the party forcibly and wrongfully dispossessed within two months of the date of the preliminary order, as if he had been in possession on the date of the order.<sup>9</sup> It does not enable a Magistrate to actually oust one person and to place another in possession of a disputed property. Such an order can be passed under s. 522 alone, but it can only follow a conviction for an offence.<sup>10</sup>

'Forcibly and wrongfully dispossessed.'—This phrase has the same meaning as forcible entry without due warrant of law under the English statute. A forcible entry must be wrongful unless it is in execution of a legal process. The word "wrongfully" means no more than "otherwise than in due course of law." It would cover the case of a rightful owner who is entitled to possession taking possession otherwise than peacefully.<sup>11</sup>

**Proviso 2.**—This proviso enables the Magistrate to attach the property in dispute in case of emergency; but the attachment lasts pending inquiry. This may be contrasted with s. 146, which enables the Magistrate to attach the property as the result of the inquiry. The attachment, it will be noted, operates only on the immoveable property.

**Sub-section (5).**—The essence and basis of the jurisdiction depends upon there being a dispute likely to create a breach of the peace. Hence, where it is

<sup>1</sup> *Taraxada Biswas v. Nurul Huq*, (1905) 32 Cal. 1093, 1098; *Katras Jherriah Coal Company v. Sibkrishna Daw & Co.*, (1894) 22 Cal. 297, 303; *Arju Mea v. Arman Mea*, (1908) 7 C. L. J. 389; *Pandurang Govind Pujari*, (1900) 2 Bom. L. R. 755, 758, 25 Bom. 179, 184.

<sup>2</sup> *Sahadat Khan v. Tajuddin Sheikh*, (1919) 46 Cal. 1056; *Dyawappa Basgunda Patil*, (1915) 17 Bom. L. R. 382.

<sup>3</sup> *Manindra Chandrag Nandi v. Barada Kanta Chowdhry*, (1902) 30 Cal. 112.

<sup>4</sup> *Narasayya v. Venkiah*, (1925) 40 Mad. 232.

<sup>5</sup> *Suryanarayana v. Ankinced Pra-*

*sad Bahadur*, (1924) 47 Mad. 713.

<sup>6</sup> *Panigunti Parthasarathy Nayanam Garu v. Pollikapu Venkatasami Reddy*, (1910) 34 Mad. 138; *Kali Kristo Thakur*, (1881) 7 Cal. 46; *Raja Babu v. Muddun Mohun Lall*, (1886) 14 Cal. 169.

<sup>7</sup> *Ghulam Sibtain v. Mussanmat Kantz Khattun*, (1920) 5 P. L. J. 240.

<sup>8</sup> *Sheoraj Singh*, (1913) 11 A. L. J. R. 305.

<sup>9</sup> *Sunderlal*, [1937] Nag. 174.

<sup>10</sup> *Tulshi Ram v. Abrar Ahmad*, (1915) 37 All. 654.

<sup>11</sup> *Bai Jiba v. Chandulal Ambalal*, (1925) 27 Bom. L. R. 1353.

shown that there is no such dispute, the Magistrate should hold his hands and not proceed further.<sup>1</sup>

**Sub-section (6).—**The result of the proceeding is that the party who is shown to be in possession at the date of the order is kept up in possession till the question of title is decided in a civil Court. The effect of the order is that the burden of proving title in a civil Court is thrown on the person who is unsuccessful.<sup>2</sup> When once the civil Court has decided the right, the Magistrate is bound to carry the adjudication into effect.<sup>3</sup>

**Sub-section (7).—**This sub-section indicates that death of a party does not put an end to the proceedings; but the proceedings are to be carried on, after making the legal representatives parties.

**Revision.**—The High Court cannot exercise powers of revision over orders which fall within the purview of this section;<sup>4</sup> but can interfere with orders which purport to be under this section but disclose an exercise of powers not conferred by it.<sup>5</sup> It has also the power to deal with the matter under s. 107 of the Government of India Act, or it can give directions under its inherent jurisdiction.<sup>6</sup>

**Sections 144 and 145.**—Section 144 is a wider and more general section than s. 145. An order under it can be made under various circumstances including a danger of a breach of the peace; whereas s. 145 is of limited scope and applies only when there is a danger of a breach of the peace. The former section is discretionary; the latter mandatory. The latter provides for a thorough inquiry into the dispute as to possession of the parties which tend to a breach of the peace. Therefore, when the special condition of s. 145 is fulfilled, s. 144 yields to s. 145 in the same sense that when he finds that there is a real dispute tending to a breach of the peace the Magistrate is bound to institute a proceeding under s. 145 and inquire into the possession of the parties, irrespective of any order that he might have originally passed under s. 144.<sup>7</sup>

**146. (1)** If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof:

Power to attach subject of dispute. Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court, appoint a receiver thereof, who,

<sup>1</sup> *Gobind Chunder Moitra*, (1881) 6 Cal. 835.

<sup>2</sup> *Dinomoni Chowdhurani v. Broja Mohini Chowdhurani*, (1901) 29 I. A. 24, 29 Cal. 187, 4 Bom. L. R. 167.

<sup>3</sup> *Motilal Hargovind*, (1904) 6 Bom. L. R. 246.

<sup>4</sup> *Jhingai Singh v. Ram Partap*, (1908) 31 All. 150.

<sup>5</sup> *Pandurang*, (1900) 2 Bom. L. R. 84, 24 Bom. 527; *Sanganbasawa*, (1904)

7 Bom. L. R. 18; *Rasal Jamal*, (1905) 7 Bom. L. R. 475; *Doulat Koer v. Rameswari Koeri*, (1899) 26 Cal. 625; *Kolha Koer v. Munewar Tewari*, (1907) 34 Cal. 840.

<sup>6</sup> *Pigot v. Ali Mahomed Mandal*, (1920) 48 Cal. 522, S.B.

<sup>7</sup> *Shabalak Singh v. Kamaruddin Mandal*, (1922) 2 Pat. 94, 107, F.B.; *Gobind Ram Marwari v. Basanti Lal Marwari*, (1927) 7 Pat. 269.

subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure :

Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

**COMMENT.**—This section is a sort of corollary to s. 145. It will be noticed that s. 145(4), proviso 2, enables a Magistrate to attach the subject-matter of dispute pending the proceedings “in a case of emergency.” Where at the end of the inquiry under s. 145 it appears either that neither of the parties was in possession or it is doubtful which of them was in possession at the date of the order, the Magistrate can attach the property under this section. The attachment remains in force until the rights of the parties are determined by a “competent Court.” Such attachment is liable to be dissolved, if it is shown that there is no likelihood of a breach of the peace. The attachment also comes to an end, when a receiver is appointed by a civil Court. The Magistrate can himself appoint a receiver during the pendency of attachment by him.

The jurisdiction to proceed under the section disappears the moment the civil Court determines the rights of the parties,<sup>1</sup> and determines the possession so far as it is in its power to do so.<sup>2</sup>

**147. (1)** Whenever any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied, from a police report or other information, that a dispute likely to cause a breach of the peace<sup>1</sup> exists regarding any alleged right of user of any land or water<sup>2</sup> as explained in section 145, sub-section (2) (whether such right be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry.

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right :

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.

<sup>1</sup> *Gulraj Marwari v. Sheikh Bhatoo*, (1905) 32 Cal. 796.

<sup>2</sup> *Paramhans Pande v. Sheodharshan Singh*, (1926) 48 All. 397.



**COMMENT.**—This section is an amplification of s. 145. “It refers to any right of user (whether such right be claimed as an easement or otherwise) of land or water (as explained in s. 145 (2)).” Immoveable property, unlike every other species of property, can be enjoyed best by possession. We own it by possessing it. Another method of its beneficial enjoyment is to have the user of it. Disputes concerning the rights of user are apt to be as acrimonious as those regarding possession of land or water. And as they are impregnated with potentialities destructive of the public peace, they deserve to be speedily and summarily checked. The procedure at the inquiry is the same as that provided by s. 145. If the inquiry shows that the right exists the Magistrate may make an order prohibiting any interference with the exercise of the right. If it appears that the right does not exist, an order may be made prohibiting the exercise of the right. In any event the order enures till a decision of a civil Court is obtained. The section comes into operation only if the right is exercised within three months of the dispute in cases of rights exercisable at all times of the year, or is exercised at a particular occasion or season in cases of periodically recurring rights.

**Scope.**—The section is not limited in its terms to easements, but relates to any dispute concerning the right of use of land or water.<sup>1</sup> It does not enable a Magistrate to make a purely declaratory order. It only enables him to prevent arbitrary interruption by any person of rights actually enjoyed, which have been exercised by the public or a person or a class of persons.<sup>2</sup> The jurisdiction of the Magistrate to act under the section ceases as soon as a competent civil Court has adjudicated upon the matter in dispute.<sup>3</sup>

**Dispute.**—A dispute relating to the performance of worship of an idol, and not to the right of user of the temple or land belonging to the idol, is not covered by this section;<sup>4</sup> but a dispute as to the right to use a mosque between persons claiming to be entitled to officiate as Kazi therein<sup>5</sup> or a dispute concerning the right to perform a religious ceremony in a mosque<sup>6</sup> or a dispute as to the right to take a religious car in procession along a public way past the houses of the opponents<sup>7</sup> or a dispute as to the right to bury in a burial-ground,<sup>8</sup> falls under the section.

1. ‘A dispute likely to cause a breach of the peace.’—It is a dispute likely to cause a breach of the peace that furnishes a foundation of jurisdiction to the Magistrate to proceed under the section.<sup>9</sup>

2. ‘Land or water.’—The expression is not necessarily restricted to private property.<sup>10</sup> It does not include a privy.<sup>11</sup>

**Sub-section (2).**—The Magistrate has no power to issue a mandatory injunction directing the removal of an existing obstruction. It is one thing to make an order prohibiting the doing of an act, it is another to order the doing of an act. This

<sup>1</sup> *Gutram Ghosal v. Lal Behari Das*, (1910) 37 Cal. 578.

<sup>2</sup> *Maharaja of Burdwan*, (1879) 5 Cal. 194.

<sup>3</sup> *Anya Shidya Patil*, (1927) 29 Bom. L. R. 715.

<sup>4</sup> *Surendra Nath Banerjee v. Shashi Bhushan Sarkar*, (1925) 52 Cal. 959; *Gutram Ghosal v. Lal Behari Das*, sup.; *Atmaram Narayan Parab*, (1880) 14 Bom. 25.

<sup>5</sup> *Kader Balcha v. Kader Balcha Routhan*, (1905) 29 Mad. 237.

<sup>6</sup> *Muhammad Musakir v. Kunji*

*Chek Musaliar*, (1887) 11 Mad. 323.

<sup>7</sup> *Basappa*, (1925) 27 Bom. L. R. 1058; *Amirkhan v. Mahalingam Pillai*, (1927) 51 Mad. 174.

<sup>8</sup> *Abdul Khudus Sahib v. Ashroof Sahib*, (1927) 51 Mad. 522.

<sup>9</sup> *Kali Kissen Tagore v. Anund Chunder Roy*, (1896) 23 Cal. 557; *Rosik Lall Nundi v. Kartik Shant*, (1874) 22 W. R. 48.

<sup>10</sup> *Amirkhan v. Mahalingam Pillai*, sup.

<sup>11</sup> *Shankar Sadashiv*, (1913) 15 Bom. L. R. 329.

sub-section allows the former, but not the latter.<sup>1</sup>

**Proviso.**—This proviso contemplates a non-exercise of the right for reasons within the control of the persons claiming the right.<sup>2</sup>

**148. (1)** Whenever a local inquiry<sup>3</sup> is necessary for the purposes of this Chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

**Local inquiry.**

ordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs<sup>4</sup> have been incurred by any party to a proceeding under this Chapter the Magistrate passing<sup>5</sup> a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. Such costs may include any expenses incurred in respect of witnesses, and of pleaders' fees, which the Court may consider reasonable.

**Order as to costs.**

**COMMENT.**—This section provides for two things. First, it is competent to a District or Sub-divisional Magistrate to depute any Magistrate subordinate to him to make local inquiry, to issue instructions for the purpose, and to provide for costs. The report becomes evidence in the case. Secondly, in proceedings under this Chapter costs can be provided for. The costs include expenses incurred in respect of witnesses and of pleaders' fees.

1. 'Local inquiry.'—The local inquiry should be restricted solely to some question relating to the feature of property about which the dispute has arisen; and it should not be directed to any matter which can be proved before the Magistrate by oral evidence, such as the question of actual possession.<sup>6</sup>

2. 'Costs.'—The Magistrate can order payment of costs incurred by witnesses and pleaders' fees or other expenses; but he has no power to award an amount to a party for damages to his crops.<sup>4</sup>

3. 'Magistrate passing.'—According to the Madras High Court, the word "passing," which follows the term "Magistrate," means no more than that the Magistrate who may award costs is the officer holding the proceeding under the Chapter or his successor entitled to discharge his functions in connection with the matter.<sup>6</sup> The Calcutta High Court has held that the order for costs need not necessarily be made at the time of pronouncing the judgment; but it must be made within a reasonable time by the same Magistrate and in the presence of the parties.<sup>6</sup> A successor to the Magistrate who passed a decision under ss. 145 to 147

<sup>1</sup> *Hem Chandra Banerji v. Abdur Rahaman*, [1942] 2 Cal. 75, overruling *Badri Das Agarwala v. Sohan Lal Oswal*, [1940] 1 Cal. 468; *Syed Usman Ali*, [1938] Nag. 580.

<sup>2</sup> *Basappa*, (1925) 27 Bom. L. R. 1058.

<sup>3</sup> *Baikunt Kumar*, (1978) 3 C. L. R. 134, 136.

<sup>4</sup> *Prayag Mahalan v. Govind Mahalan*, (1905) 32 Cal. 602.

<sup>5</sup> *Vythianada Tambrian v. Mayandi*

*Chetty*, (1906) 29 Mad. 373.

<sup>6</sup> *Giridhar Chatterjee v. Ebadullah Naskar*, (1895) 22 Cal. 384; *Binoda Sundari Chowdhurani v. Kali Kristo Pal Chowdhury*, (1895) 22 Cal. 387; *Tomi-juddi*, (1897) 24 Cal. 757; *Prokash Chunder Sarkar v. Ram Prasad Pattak*, (1900) 28 Cal. 302; *Nagar Chandra Pal Chowdhry v. Siddhartha Krishna Mazumdar*, (1920) 47 Cal. 974; *Kapoor Chand v. Suraj Prasad*, (1933) 55 Mad. 301, F.B.

cannot pass an order as to costs under this sub-section.<sup>1</sup>

Where a Magistrate has given his decision but has failed to make any order for costs, the High Court in revision has power to make an order for the payment of the costs of such proceedings.<sup>2</sup>

## CHAPTER XIII.

### PREVENTIVE ACTION OF THE POLICE.

**149.** Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

**COMMENT.**—Preventive jurisdiction, under the Code, is classified under two broad heads. The one may be called magisterial action: and the second, police action. The magisterial preventive jurisdiction is dealt with in Chapters VIII to XII. It is quasi-judicial and quasi-executive. Cases falling under the second head are purely executive. They fall into three categories: (1) prevention of cognizable offences (ss. 149-151); (2) prevention of injury to public property (s. 152); and (3) inspection of weights and measures (s. 153). Unlike the first head, there is no judicial inquiry at all; and from the very urgency of the case the police have to act on their own initiative and of their own knowledge. The powers given are very wide indeed and their exercise is ordinarily summary.

Police-officers have been armed with extensive powers to prevent commission of cognizable offences, i.e. offences for which they could arrest without a warrant. First of all, s. 149 enables a police-officer to prevent the commission of a cognizable offence (s. 149). If the police-officer receives information of a design to commit such an offence, he can either pass on the information to his superior police-officer or to any other officer (s. 150). If the commission of the offence cannot be otherwise prevented he can forthwith arrest the person so designing (s. 151).

**150.** Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

**151.** A police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

**152.** A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

<sup>1</sup> *Bagawandass v. Muhammad Gani*,  
[1944] Mad. 144.

<sup>2</sup> *Ma Mya Khin v. Maung Pa Htwa*,  
(1938) 11 Ran. 361, F.B.

**COMMENT.**—The one essential requirement of this section is that the attempt must be committed “in the view” of the police-officer. The emergency arising here is not so great as the one arising under ss. 149-151, though it certainly is more pressing than the one referred to in s. 153.

**153. (1)** Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

**(2)** If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

**COMMENT.**—The officer who can act under this section is the officer in charge of a police-station, and the place searched should be within the limits of that station. All he can do is to seize false weights or measures if any are found and to report the seizure to the Magistrate having jurisdiction.

## PART V.

### INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

#### CHAPTER XIV.

**154.** Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing<sup>1</sup> by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book<sup>2</sup> to be kept by such officer in such form as the Provincial Government may prescribe in this behalf.

**COMMENT.**—The information given to a police-officer and reduced to writing as required by this section is known as the “first information.” “First information report” is not mentioned in the Criminal Procedure Code, but these words are understood to mean information recorded under this section.<sup>3</sup> It is an important document and may be put in evidence to support or contradict the evidence of the person who gave the information. The investigation under this Chapter proceeds on the first information.

The provisions as to an information report are enacted to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished, and the report can be put in evidence when the informant is examined if it is desired to do so.<sup>4</sup>

<sup>1</sup> *Manimohan Ghosh*, (1931) 58 Cal. 1812.

<sup>2</sup> *Nazir Ahmed*, (1944) 47 Bom. L. R. 245, F.C.

A telephone message received by a police-station reporting the commission of a cognizable offence can be recorded as a first information report by the station writer who receives it. The station writer himself can sign it as the person giving the information, for a first information report may be merely hearsay and need not necessarily be given by a person who has first-hand knowledge of the facts. A subsequent statement made to the police in the course of investigation of the offence cannot be treated as a first information report and is inadmissible in evidence under s. 162.<sup>1</sup>

**Scope.**—This chapter, except s. 155, does not apply to the police in Calcutta.<sup>2</sup> Nothing in this Chapter applies to the Bombay City Police.<sup>3</sup>

1. 'Every information relating to the commission of a cognizable offence... shall be reduced to writing.'—A careful and accurate record of the "first information" has always been considered as a matter of the highest importance by the Courts in India, the object of the "first information" being to show what was the manner in which the occurrence was related when the case was first started. It can be used to corroborate or impeach the testimony of the person lodging it under ss. 145, 157 and 158 of the Evidence Act. It can also be used under s. 32(1) and s. 8(j) and (k).

The word "information" means something in the nature of a complaint or accusation, or at least information of a crime, given with the object of putting the police in motion in order to investigate, as distinguished from information obtained by the police when actively investigating a crime.<sup>4</sup> Such a document becomes valueless if drawn up by some person other than the proper informant. Where the first information which related to a charge of criminal conspiracy was drawn up by a police-officer employed in the Criminal Investigation Department and settled by an attorney it was held that it was of no value.<sup>5</sup>

A statement made by a witness during investigation after the police-officer has actually arrived at the scene and himself seen what has happened is not "first information."<sup>6</sup>

2. 'The substance thereof shall be entered in a book, etc.'—Only the substance of information relating to the commission of a cognizable offence is to be entered in a book to be kept at every police-station in such form as the Provincial Government may prescribe. This book is known as a "General Diary." It is also called a "Station Diary" or a "Station House Register."

The Magistrate of the district is at liberty to call for and inspect such diary.

155. (1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case<sup>1</sup> or commit the same for trial, or of a Presidency Magistrate.

<sup>1</sup> *Shwe Pru*, [1941] Ran. 346.

<sup>2</sup> *Nilmadhub Mitter*, (1888) 15 Cal. 595, 606, F.B.

<sup>3</sup> See Bom. Act IV of 1902, s. 2(1), and Schedule A, overruling *Visram Babaji*, (1896) 21 Bom. 495.

<sup>4</sup> *Gansa Oraon*, (1923) 2 Pat. 517.

<sup>5</sup> *Peary Mahan Das v. D. Weston*, (1911) 16 C. W. N. 145.

<sup>6</sup> *Chittar Singh*, (1924) 47 All. 280; *Sultan v. Major C. de M. Wellborne*, (1925) 3 Ran. 577.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

**COMMENT.**—The previous section dealt with information relating to the commission of a cognizable offence: this section deals with information relating to a non-cognizable offence. •

**Sub-section (1).**—The police-officer receiving information of a non-cognizable offence must enter the substance of it in a book kept in such form as the Provincial Government may prescribe and then refer the informant to the Magistrate. The “book” is the diary kept.

**Sub-section (2).**—A police-officer must not investigate a non-cognizable case without an order of a Magistrate. There is no section empowering a police-officer to make a report in such a case without the orders of a Magistrate.<sup>1</sup> But the investigation of a non-cognizable offence would not be illegal if it is made during the investigation of a cognizable offence.<sup>2</sup>

1. ‘Without the order of a Magistrate of the first or second class having power to try such case.’—The order must be of a Magistrate of the first or second class having power to try the case or commit it for trial. The order of any Magistrate of the first or second class is, therefore, not sufficient. •

**Sub-section (3).**—When the police-officer receives an order from the Magistrate to investigate a non-cognizable case he may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as in cognizable cases.

**156. (1)** Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry on trial. •

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

**COMMENT.**—**Sub-section (1).**—This sub-section enables the police to investigate cognizable offences committed beyond their local jurisdiction. See ss. 181, 182 and 183.

**Sub-section (3).**—This sub-section empowers a Magistrate to order a police inquiry in a case where the Magistrate does not himself issue process at once. The Magistrate after he has acted under Chapter XVI cannot proceed under Chapter XIV.<sup>3</sup> This sub-section enables a Magistrate to order the investigation of an offence of which he may have taken cognizance under s. 190. He may do so even before the examination of the complainant.<sup>4</sup>

<sup>1</sup> *Suda*, (1901) 3 Bom. L. R. 586, 26 Bom. 150, 156, F.B.; *Bahabul Shah v. Tarak Naji Chowdhry*, (1897) 24 Cal. 691.

<sup>2</sup> *Shivaswami*, (1927) 29 Bom. L. R.

741, 51 Bom. 498.

<sup>3</sup> *Isaf Nasya*, (1926) 54 Cal. 303.

<sup>4</sup> *Vishvanath*, (1906) 8 Bom. L. R. 589.

A Magistrate can also under s. 159 direct an investigation or preliminary inquiry into a case which may have been reported by the police as not worth investigating.

157. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report<sup>1</sup> of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the Provincial Government may, by general or special order, prescribe in this behalf to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender :

Provided as follows :—

(a) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation<sup>2</sup> on the spot ;

(b) if it appears to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Provincial Government, the fact that he will not investigate the case or cause it to be investigated.

COMMENT.—The section requires that immediate intimation of every complaint or information preferred to an officer in charge of a police-station of the commission of a cognizable offence shall be sent to the Magistrate having jurisdiction. The object of this provision is obvious, and it involves more than a mere technical compliance with the law. The Magistrate is primarily responsible for the condition of the district as regards repressible crime, and he is not at liberty to divest himself of that responsibility or to relax that supervision over crime which the law intends that he should exercise.

1. 'Report.'—This word is not defined in the Code, but it appears that the Legislature has studiously attached to the expression "police-report" a peculiar meaning throughout the Code wherever the expression occurs, and pointed out the occasions when and the purposes for which such reports should be made. Where a police report goes beyond those occasions and purposes it must fall within the definition of "complaint" in s. 4, cl. (b), of the Code.<sup>3</sup>

Reports made by police-officers in compliance with this section are not public documents within the meaning of s. 74 of the Indian Evidence Act, and consequently the accused is not entitled, before trial, to have copies of such reports.<sup>4</sup>

<sup>1</sup> *Sada*, (1901) 20 Bom. 150, 157, <sup>2</sup> *Arumugam*, (1897) 20 Mad. 189  
3 Bom. L. R. 586, F.B. <sup>4</sup> F.B.

2. 'Investigation.'—Investigation includes all proceedings under the Code for the collection of evidence conducted by a police-officer or by any person other than a Magistrate, who is authorised by the Magistrate in this behalf.<sup>1</sup>

158. (1) Every report sent to a Magistrate under section 157 shall, if the Provincial Government so directs, be submitted through such superior officer of police as the Provincial Government, by general or special order, appoint in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

159. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry<sup>2</sup> into, or otherwise to dispose of, the case in manner provided in this Code.

COMMENT.—On receiving a police report the Magistrate may dismiss the case if there is no sufficient ground for investigation or he may proceed under this section.

An inquiry under this section can be made only on the submission of a police report; that is, a report made before the completion of the police investigation; if a complaint is made to the Magistrate, he is bound to proceed under s. 200.<sup>3</sup>

1. 'Preliminary inquiry.'—This expression refers to an inquiry under Chapter XVIII. An inquiry includes every inquiry other than a trial under this Code by a Magistrate or a Court.<sup>3</sup>

160. Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself<sup>4</sup> of any person being within the limits of his own or any adjoining station<sup>5</sup> who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend<sup>6</sup> as so required.

COMMENT.—This section authorizes a police-officer making an investigation under this Chapter to require the attendance before himself of any person (within certain limits), who appears to be acquainted with the circumstances of the case.

1. 'By order in writing, require the attendance before himself.'—The order requiring the attendance of a person must be in writing.

2. 'Of any person being within the limits of his own or any adjoining station.'—This section does not authorize a police-officer to require the attendance of an accused person with a view to his answering the charge. The intention of the Legislature seems to have been only to provide a facility for obtaining evidence and not for procuring the attendance of the accused, who may be arrested at any time, if necessary, without a warrant.<sup>4</sup>

<sup>1</sup> *Manimohan Ghosh*, (1931) 58 Cal. <sup>2</sup> All. 30.  
1312.

<sup>3</sup> *Vide* s. 4, cl. (k).

<sup>4</sup> *Lokenath v. Sanyasi*, (1903) 30 Cal. 923; *Abdul Rehman*, (1909) 32 Cal. 274, F.B.

<sup>5</sup> *Samnada Chetti*, (1893) 7 Mad.



3. 'Such person shall attend.'—A person who fails to comply with the order of the police may be prosecuted for disobedience under s. 174 of the Indian Penal Code.<sup>1</sup>

161. (1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Provincial Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.<sup>1</sup>

(2) Such person shall be bound to answer all questions relating to such case<sup>2</sup> put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police-officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so he shall make a separate record of the statement of each such person whose statement he records. †

COMMENT.—Under this section a police-officer making an investigation can examine the person acquainted with the facts of the case, and reduce them into writing.

1. 'May examine orally any person supposed to be acquainted with the facts.... of the case.'—No oath or affirmation is required in an examination under this section. It is not obligatory to reduce to writing the statement of the person examined.

'Any person.'—The words "any person" in this section, which must be read in conjunction with s. 162, include any person who may subsequently be accused of the crime in respect of which the investigation is made by the police-officer.<sup>3</sup>

Right of accused to inspect statements recorded.—Accused has a right to ask for a copy of such statements for the purpose of contradicting witnesses for the prosecution.<sup>4</sup>

2. 'Such person shall be bound to answer all questions relating to such case.'—It is obligatory on a person examined in the course of a police investigation to answer all questions put to him other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

The Criminal Procedure Code of 1882 contained the word "truly" after the word "question." This word has been omitted in the present Code. Under the law as it now stands, a person who is examined is not "legally bound to state the truth." But a person who gives false information in answer to such questions can be prosecuted under the provisions of ss. 202 and 203 of the Indian Penal Code.<sup>4</sup>

162. (1) No statement made by any person to a police-officer<sup>1</sup> in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof,<sup>2</sup> whether in a police-diary or otherwise,<sup>3</sup>

<sup>1</sup> *Jogendra Nath Mukerjee*, (1897) 280. 24 Cal. 320.

<sup>2</sup> See *Pakala Narayana Swami*, (1939) 66 I. A. 66, 41 Bom. L. R. 428, 18 Pat. 234; *Dinanath*, [1940] Nag. 232.

<sup>3</sup> *Sadhu Shaikh*, (1927) 32 C. W. N.

<sup>4</sup> *Sankaralinga Kone*, (1900) 23 Mad. 544.

† Sub sec. (3) was added by Act II of 1945, s. 2.

or any part of such statement or record, be used for any purpose<sup>4</sup> (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made :

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall, on the request of the accused,<sup>5</sup> refer to such writing and direct that the accused<sup>6</sup> be furnished with a copy thereof, in order that any part of such statement, if duly proved,<sup>6</sup> may be used to contradict such witness<sup>7</sup> in the manner provided by section 145 of the Indian Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination :

Provided, further, that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 82, clause (1), of the Indian Evidence Act, 1872, or to affect the provisions of section 27 of that Act.<sup>8</sup>

**COMMENT.**—Under this section no statement made by any person to a police-officer in the course of an investigation can be referred to or used for any purpose by the Court or anyone else at an enquiry or trial in respect of an offence under investigation at the time when such statement was made, except as provided in that section. It matters not whether the statement was made orally or was reduced to writing, or whether *in extenso* or in an abridged form it is set out in a special diary under s. 172 or in any other document, or whether it is proposed to adduce oral evidence of the contents of the statement. If, and so soon as, any prosecution witness gives evidence in support of the charge against him the accused is entitled to request the Court to refer to the witness' statement to the police, and, unless the Court is of opinion that any part of the statement falls within the second proviso, the Court must direct that the accused be furnished with a copy of the entire statement of the witness to the police, whether or not in the opinion of the Court there is anything in the statement which is inconsistent with the evidence that the witness has given in the course of the inquiry or trial; and the statement, in whole or in part as the case may be, may then be used in the manner prescribed in the first proviso.<sup>1</sup>

If such a statement has been reduced into writing, its use is prohibited unless (a) it is a statement of a witness called for the prosecution, (b) the Court has ordered the accused to be furnished with a copy of it, and (c) the written record of the statement has been duly proved. It may then be used within the limits set forth in the proviso.<sup>2</sup>

**Scope.**—The section applies to a statement made by a person who was not an accused at the time of making the statement but who is an accused at the time

<sup>1</sup> *Nga Lun Thoun*, (1935) 18 Ran. 570, F.B.

<sup>2</sup> *Bahadur Singh*, (1926) 7 Lah. 264.

it is tendered in evidence.<sup>1</sup> Statements made to a police-officer by such person are not admissible in evidence. This section applies to summons as well as warrant cases.<sup>2</sup>

The police when investigating a case under the preventive sections of the Criminal Procedure Code are not acting under this section. An enquiry under Chapter VIII of the Code is not an enquiry into an "offence," and this section cannot be used to shut out statements given to the police by persons who are afterwards called as witnesses.<sup>3</sup>

This section does not prohibit a Judge from looking into the police diary *suo motu* without any request by the accused or prevent him from using the statement of a person examined by the police, which is recorded in such diary, for the purpose of contradicting such person when he gives evidence in favour of the Crown as a prosecution witness. The only limitation imposed is that such statement may not be used for any other purpose. In a case where the evidence given in Court implicates persons who are not mentioned in the first information report it is always advisable for the Judge to look into police papers in order to ascertain whether the persons implicated by the witnesses at the trial had been so implicated by them during the investigation.<sup>4</sup>

1. 'Statement made by any person to a police-officer.'—This includes oral or written record of the statement. The first information report (s. 154) against an accused is not a statement within the meaning of this section, inasmuch as it is not made in the course of an investigation.<sup>5</sup>

The words "any person" include a person who was not accused at the time of making the statement, but became so thereafter.<sup>6</sup>

Evidence relating to the test-identification of the accused by witnesses before the investigating officer is inadmissible on behalf of the prosecution, under this section.<sup>7</sup>

2. 'Nor shall any such statement or any record thereof.'—The section prohibits not only the use of the written record as itself evidence, but all use of an oral testimony as to the statement for any purpose subject to the proviso. The words "if reduced into writing" only apply to the words "be signed by the person making it" and the use of an oral statement is therefore equally prohibited along with that of a written statement.<sup>8</sup>

3. 'Whether in a police-diary or otherwise.'—The police cannot claim any privilege in respect of any statement on the ground that it is a statement recorded under s. 172. Whether a statement is recorded under s. 162 or s. 172, an accused person is entitled to a copy of it for cross-examination. Even if the statement is in the form of memoranda the accused is entitled to have a copy of it.<sup>9</sup>

<sup>1</sup> *Pakala Narayana Swami*, (1939) 66 I. A. 66, 41 Bom. L. R. 423, 18 Pat. 234, overruling *Azimuddy*, (1926) 54 Cal. 237; *Jagwa Dhanuk*, (1925) 5 Pat. 63, 77; *Maung Tha Din*, (1926) 4 Ran. 72; *Rannun*, (1926) 7 Lah. 84; and approving *Syamo Maha Patro*, (1932) 55 Mad. 908, F.B.; *Ramdayal Mangilal*, [1941] Ran. 784.

<sup>2</sup> *Dinanath Sahay*, (1938) 17 Pat. 622.  
<sup>3</sup> *Harī Singh*, (1933) 56 Mad. 987.  
See *Rasulbuz*, [1942] Kar. 252.

<sup>4</sup> *Lal Miya*, [1943] 1 Cal. 543.

<sup>5</sup> *Azimuddy*, (1926) 54 Cal. 237.

<sup>6</sup> *Pakala Narayana Swami*, (1939) 66 I. A. 66, 41 Bom. L. R. 423, 18 Pat. 234; *Syamo Maha Patro*, supra; *Dinanath*, [1940] Nag. 232.

<sup>7</sup> *Krishna Kahar*, [1939] 2 Cal. 569.

<sup>8</sup> *Maung Tha Din*, (1926) 4 Ran. 72, 81, F.B.; *Thimmappa v. Thimmappa*, (1928) 5 Mad. 967, F.B., overruling *Venkatasubbiah*, (1924) 48 Mad. 640.

<sup>9</sup> *Bansidhar*, (1930) 53 All. 458.

4. 'Any part of such statement or record, be used for any purpose.'—The statement cannot be used for the purpose of proving an omission.<sup>1</sup> It can only be used for the purpose of contradiction. Contradiction means the setting of one statement against another and not the setting up of a statement against nothing at all. If a witness in Court says "I saw A running away," he may be contradicted by his statement to the police "I did not see A running away."

A statement made by a witness for the prosecution before the police during the investigation naming the accused as one of the rioters cannot be used to corroborate the evidence given by that witness during the trial in favour of the prosecution.<sup>2</sup>

Proviso 1.—This proviso refers to the case where the statement has been recorded. The accused has a right to the copies of statements made to the police subject to proviso 2.<sup>3</sup> The application for such copies must be made at the time when the prosecution witness, whom it is desired to cross-examine by reference to his previously recorded statement, appears in the witness-box.<sup>4</sup>

The accused has a right to call upon the prosecution to produce copies of the statements made by the prosecution witnesses to the police. The duty of the prosecution to produce them cannot be evaded by pleading that the statements were only reduced to writing in the shape of rough memoranda or notes.<sup>5</sup>

If the statements of the persons examined as witnesses by the police are destroyed, the accused is robbed of his statutory means of cross-examination and thereby denied the opportunity of effectively cross-examining prosecuting witnesses, and the evidence of such witnesses is not admissible and proper for consideration as it does not satisfy the requirements of s. 138 of the Indian Evidence Act.<sup>6</sup>

5. 'On the request of the accused.'—A Court is not justified in admitting a statement made by a person to a police-officer, unless the accused or his pleader asks the Court to refer to such record.<sup>7</sup>

6. 'If duly proved.'—The words indicate that if the accused wishes to rely on anything in the previous statement of a witness to the police he must prove it in the ordinary way. If the witness admits this in cross-examination, it will of course be sufficient; if he denies the contradiction and the police-officer who took it down is called by the prosecution, the previous statement of the witness on the point may be proved by him; if he is not called by the prosecution, the Court would no doubt itself in most cases call him, or if the accused is calling evidence in support of his defence, it may be worth his while to call the police-officer himself.<sup>8</sup> Unless the statement is duly proved, the evidence given in Court cannot be contradicted by it under s. 145, Evidence Act.<sup>9</sup>

7. 'May be used to contradict such witness.'—Such statement cannot be used for any purpose except to contradict a prosecution witness. It cannot be used for the purpose of contradicting a defence witness,<sup>10</sup> or for corroborating the statements made by prosecution witnesses in Court.<sup>11</sup>

<sup>1</sup> *Sakhawat*, [1937] Nag. 277.

<sup>2</sup> *Sahdeo Gosain*, [1944] F.C.R. 228.

<sup>3</sup> *Madari Sikdar*, (1926) 54 Cal. 307; *Mahomed Adam*, (1936) 38 Bom. L. R. 1186.

<sup>4</sup> *Shaikh Usman*, (1927) 29 Bom. L. R. 1581, 52 Bom. 195; *Tahal Saithwar*, (1930) 53 All. 94; *Suraybati*, (1933) 56 All. 750.

<sup>5</sup> *Vishwanath*, [1937] Nag. 172.

<sup>6</sup> *Bakram*, [1945] Nag. 151.

<sup>7</sup> *Nga Po Chan*, (1926) 4 Ran. 356.

<sup>8</sup> Report of the Select Committee, 1916; *Vithu*, (1924) 26 Bom. L. R. 965.

<sup>9</sup> *Labh Singh*, (1924) 6 Lah. 24; *Aximuddy*, (1926) 54 Cal. 287; *Madari Sikdar*, (1926) 54 Cal. 307; *Ibrahim*, (1927) 8 Lah. 605; *Shaikh Usman*, (1927) 29 Bom. L. R. 1581; *Bana Singh*, (1927) 6 Ran. 137; *Sulaiman Mohamed*, (1928) 6 Ran. 672; *Narayana*, (1932) 56 Mad. 231.

<sup>10</sup> *Ganga*, (1929) 4 Luck. 726.

<sup>11</sup> *Jhari Gope*, (1928) 8 Pat. 270.

**Proviso 2.**—This proviso deals with the exclusion of irrelevant matters which the public interest requires should not be disclosed.

8. 'Or to affect the provisions of section 27 of that Act.'—The addition of these words by Act XV of 1941, s. 2, sets at rest the divergence of view between the Madras,<sup>1</sup> the Patna<sup>2</sup> and the Bombay<sup>3</sup> High Courts on the one hand, and the Lahore,<sup>4</sup> the Allahabad<sup>5</sup> and the Calcutta<sup>6</sup> High Courts on the other. The former held that s. 162 did not affect the provisions of s. 27 of the Indian Evidence Act and therefore information leading to the discovery of a fact made to the police and admissible under s. 27 of the Indian Evidence Act was not rendered inadmissible under this section. The latter held that s. 27 of the Evidence Act was repealed by this section and evidence of information, whether it amounted to a confession or not, which related to the fact discovered in consequence of such information, was not admissible in evidence. The Legislature has adopted the former view.

163. (1) No police-officer<sup>1</sup> or other person in authority<sup>2</sup> shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

No inducement to be offered.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

**COMMENT.**—The section prohibits a police-officer or a person in authority from offering or making any inducement, threat, or promise as is mentioned in s. 24 of the Evidence Act. But a police-officer or other person shall not prevent by any caution any person from making any statement which he may be disposed to make of his own free will.

1. 'Police-officer.'—This expression has been given an extended meaning in cases decided under s. 25 of the Evidence Act. It has been held that the term "police-officer" is not to be read in a technical sense but in its more comprehensive and popular meaning.<sup>7</sup> Thus a police patel is a police-officer;<sup>8</sup> but a Village Magistrate is not.<sup>9</sup>

2. 'Person in authority.'—This expression finds place in s. 24 of the Evidence Act. The test whether a person is a person in authority would seem to be, has the person authority to interfere with the matter; and any concern or interest in it would be sufficient to give him that authority.<sup>10</sup>

164. (1) Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Provincial Government may, if he is not a police-officer, record any statement or confession<sup>1</sup> made to him in the course of an investigation

<sup>1</sup> *Subbiah Troar*, [1939] Mad. 947; *Thimappa v. Thimappa*, (1928) 51 Mad. 967; *Syamo Maha Patro* (1932) 65 Mad. 903, F.B.; *Public Prosecutor v. Radhakrishnayya*, [1944] Mad. 224.

<sup>2</sup> *Mayadhar Pothal*, (1939) 18 Pat. 450.

<sup>3</sup> *Biram Sardar*, (1940) 48 Bom. L. R. 157, [1941] Bom. 838.

<sup>4</sup> *Hakam*, [1940] Lah. 242, F.B.

<sup>5</sup> *Baldeo*, [1940] All. 896, F.B.

<sup>6</sup> *Naresch Chandra Das*, [1942] 1 Cal. 436.

<sup>7</sup> *Hurribole Chunder Ghose*, (1876) 1 Cal. 207.

<sup>8</sup> *Bhima*, (1892) 17 Bom. 485.

<sup>9</sup> *Samq Papp*, (1888) 7 Mad. 287.

<sup>10</sup> *Navroji Dadabhai*, (1872) 9 B. H. C. 858.

under this Chapter or at any time afterwards before the commencement of the inquiry or trial.<sup>a</sup>

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed<sup>b</sup> in the manner provided in section 864, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum<sup>c</sup> at the foot of such record to the following effect:—

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,  
Magistrate."

*Explanation.*—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

**COMMENT.**—Scope.—This section is not exhaustive and does not limit the generality of s. 21 of the Evidence Act as to the relevancy of admission.<sup>1</sup> The effect of this section, when read with ss. 24, 25, 26 and 29 of the Evidence Act, is that (1) a confession made by an accused person to a police-officer is inadmissible in evidence, (2) if a person in police custody desires to make a confession, he must do so in the presence of a Magistrate, (3) a Magistrate shall not record it unless he is, upon inquiry from the person making it, satisfied that it is voluntary, (4) when the Magistrate records it, he shall record it in the manner provided for in this section, and (5) only when so recorded the confession becomes relevant and admissible in evidence.<sup>a</sup>

The Patna High Court has held that a Presidency Magistrate is empowered to record a confession in the course of a police investigation.<sup>2</sup> The Bombay High Court has held that he cannot.<sup>4</sup>

1. 'May . . . record any statement or confession.'—This clause authorizes a Magistrate to record the statement of a person who appears before him as a witness as well as the confession of a person accused of an offence.<sup>a</sup>

The word "statement" is limited to a statement by a witness, but includes that made by an accused and not amounting to a confession.<sup>a</sup> The statement

<sup>1</sup> *Barindra Kumar Ghose*, (1909) 37 Cal. 467.

<sup>2</sup> *Sao Min*, [1939] Ran. 97.

<sup>3</sup> *Nú Maghab Chowdhry*, (1925) Pat. 171.

<sup>4</sup> *Ramnath Mahabir*, (1925) 28 Bom. L. R. 111, 114, 50 Bom. 111.

<sup>5</sup> *Malka*, (1878) 2 Bom. 648.

<sup>a</sup> *Legal Remembrancer v. Lalit Mohan Singh Roy*, (1921) 49 Cal. 167; *Ramanujama*, (1916) 39 Mad. 977; *Golam Mohammad Khan*, (1942) 4 Pat. 327; *Lalji Dusadh*, (1927) 6 Pat. 747.

of a witness made behind the back of the accused cannot be used as evidence against him. The only object in recording such statement is to obtain a hold over the witness.<sup>1</sup>

A "confession" is an admission made at any time by a person charged with an offence, stating or suggesting the inference that he has committed the offence.<sup>2</sup> A declaration is not a confession if it is not made with an *animus confitendi*, that is, with an intention to confess, or if it does not amount to an admission of facts from which guilt is directly deducible.<sup>3</sup>

Notwithstanding the use of the word "may" all confessions should be recorded. 'Recording' means writing down the confession and not merely filing a written confession written by the accused while in the police custody and admitted by him to be correct when read over to him by the Magistrate.<sup>4</sup> A confession made to a Magistrate and not recorded by him cannot be proved at the trial of the person making the confession by tendering the oral evidence of the Magistrate.<sup>5</sup>

2. 'In the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.'—A confession under this section must be made either in the course of an investigation under Chapter XIV or after it has ceased and before the commencement of an inquiry or trial. The condition requiring the confession to be prior to the commencement of the inquiry or trial is only imposed when the investigation has ceased, and not when it is made in the course of the police investigation.<sup>6</sup> If the confession be made before a Magistrate having jurisdiction to deal with the matter, it will be the commencement of a trial or inquiry under Chapter XV and treated as a confession under s. 364, whether or not the case be still under the investigation of the police.<sup>7</sup>

Sub-section (2).—The statement as to witnesses must be recorded in the manner prescribed in ss. 355 to 361 of this Code, and as to the accused, ss. 342, 364. Section 533 prevents justice being frustrated by reason of a Magistrate having neglected to comply strictly with the provisions of this section.

3. 'Signed.'—It is necessary that the confession should be signed by the accused. If it is not signed by the accused or attested by his mark, it will not be admissible in evidence.<sup>8</sup> The Nagpur High Court has held that an inadvertent omission to obtain the signature of the accused does not vitiate the confession and the irregularity is curable under s. 533.<sup>9</sup> The attestation of the accused is unnecessary when a confession is made in Court to the officer trying the case at the time of trial.<sup>10</sup>

Sub-section (3).—The present section imposes statutory obligation on the Magistrate to warn the accused, before recording his confession, that he is not bound to make it and that if he does so it may be used as evidence against him.<sup>11</sup> Failure to convey the caution invalidates the confession and renders it inadmissible

<sup>1</sup> *Manni*, (1930) 6 Luck. 210.

<sup>2</sup> Stephen's Digest on the Law of Evidence.

<sup>3</sup> *Karu*, [1937] Nag. 524.

<sup>4</sup> *Ram Baran Shukla*, (1933) 55 All. 426.

<sup>5</sup> *Nazir Ahmad* (No. 2), (1936) 38 Bom. L. R. 987; 17 Lah. 629, F.C., disapproving *Abdulla*, (1933) 14 Lah. 290; *Bakshian*, (1935) 16 Lah. 912; *Muhammad Ali*, (1933) 56 All. 302, F.B.; and *Peddo Obigadu*, (1921) 45 Mad. 230.

<sup>6</sup> *Barindra Kumar Ghose*, (1909) 37 Cal. 467.

<sup>7</sup> *Sat Narain Tewari*, (1905) 35 Cal. 1085.

<sup>8</sup> *Bai Ratan*, (1873) 10 B. H. C. R. 166; <sup>9</sup> *Bhimappa Saibanna*, (1945) 47 Bom. L. R. 643; *Neha'u*, [1937] Nag. 268.

<sup>10</sup> *Shamla*, [1941] Nag. 104.

<sup>11</sup> *Chumman Shah*, (1878) 3 Cal. 756.

<sup>12</sup> *Tukaram*, (1932) 35 Bom. L. R. 234, 57 Bom. 386, F.B.

in evidence.<sup>1</sup> Such a failure cannot be cured under s. 533.<sup>2</sup> But the Madras and the Allahabad High Courts have held that a confession, otherwise admissible in evidence, is, by virtue of s. 29 of the Evidence Act, admissible even though the caution prescribed by this sub-section has not been administered. This section does not override s. 29 of the Evidence Act, and it is the latter Act that must, as a rule, be looked to when there is a question of the admissibility of a particular piece of evidence. It has also pointed out the inconsistency between the provisions of s. 164(3) and s. 163(2) as regards the necessity or propriety of administering a caution.<sup>3</sup>

A confession made by an accused person was recorded by the Magistrate, but was retracted prior to the completion of the certificate required under this clause, the accused then stating that the confession had been made at the instance of the police. It was held that the confession was not admissible in evidence.<sup>4</sup>

'Reason to believe that it was made voluntarily.'—The Magistrate must satisfy himself that no pressure or force was used on the accused who makes the confession. Any marks on the person of the accused vitiate the voluntary character of the confession.<sup>5</sup> A Magistrate is prohibited from recording a confession until he has satisfied himself by questioning the person making it that it is voluntary.<sup>6</sup> When questions were not put so as to elicit whether the confession was being made voluntarily, such confession is not only inadmissible under this section but it cannot be used under the other provisions of the Indian Evidence Act such as ss. 21 and 29.<sup>7</sup>

4. 'He shall make a memorandum.'—A confession without a memorandum that it is voluntarily made is bad in law and cannot be admitted in evidence.<sup>8</sup> The memorandum need not be made in the handwriting of the Magistrate; it is sufficient if it is signed by him.<sup>9</sup> The Nagpur High Court has held that where the Magistrate has not certified that the confession is voluntary, evidence is admissible to prove that the confession was voluntarily made and represents what was said by the accused.<sup>10</sup>

Explanation.—This Explanation lays down that it is not necessary that the Magistrate recording a statement should have jurisdiction to inquire into or try the particular case.

Retracted confession.—The Bombay High Court has laid down: (1) A confession is not to be regarded as involuntary merely because it is retracted. (2) As against the maker of the confession, the retracted confession may form the basis of a conviction if it is believed to be true and voluntarily made. It can be acted upon along with the other evidence in the case, and there is no rule of law that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. The use to be made of such a confession is a matter of prudence rather than of law.<sup>11</sup> (3) A retracted confession can be used

<sup>1</sup> *Gulabu*, (1918) 35 All. 260.

<sup>2</sup> *Housabai*, (1932) 34 Bom. L. R. 1240, 56 Bom. 540.

<sup>3</sup> *Vellamoonji Goundan*, (1931) 55 Mad. 711; *Nanua*, [1941] All. 280.\*

<sup>4</sup> *Arjan Singh*, (1929) 11 Lah. 106.

<sup>5</sup> *Appa*, (1899) 1 Bom. L. R. 357.

<sup>6</sup> *Jai Narayan Rao*, (1890) 17 Cal. 862, 871.

<sup>7</sup> *Sardarniyi*, [1937] Nag. 416.

<sup>8</sup> *Shikya*, (1876) 1 Bom. 219; *Daji Narsu*, (1882) 6 Bom. 288; *Bhawala*,

(1925) 6 Lah. 183; *Partap Singh*, (1925) 6 Lah. 415.

<sup>9</sup> *Tukaram*, (1932) 35 Bom. L. R. 284, 57 Bom. 336, F.B., overruling *Housabai*, (1932) 34 Bom. L. R. 1240, 56 Bom. 540.

<sup>10</sup> *Bakiramsingh*, [1940] Nag. 506.

<sup>11</sup> *Gharya*, (1894) 10 Bom. 728; *Gangia*, (1898) 23 Bom. 816; *Rasvanta*, (1900) 25 Bom. 168, 2 Bom. L. R. 761; *Rama Kariyappa*, (1929) 31 Bom. L. R. 565.



against a co-accused only if it is corroborated in material particulars.<sup>1</sup> The corroboration should not only confirm the general story of the alleged crime, but must also connect the co-accused with it.<sup>2</sup>

The Allahabad High Court has held that it does not necessarily follow that, because a confession made by an accused person is subsequently retracted and there is little or no evidence on the record to support the confession, therefore the confession is to be rejected. The credibility of such a confession is in each case a matter to be decided by the Court according to the circumstances of each particular case, and if the Court is of opinion that such a confession is true, the Court is bound to act, as far as the person making it is concerned, upon such belief.<sup>3</sup> It is unsafe to rely on and act upon retracted confessions unless, upon a consideration of the whole of the evidence in the case, the Court is in a position to come to the unhesitating conclusion that the confessions were true. It is often very difficult, if not impossible, to come to such a conclusion unless "there is," in the words of Kerman, J., in *Queen-Empress v. Rangi*,<sup>4</sup> "reliable independent evidence to corroborate to a material extent and in material particulars the statements contained in the withdrawn confessional statements." It seems, therefore, to be unsafe in the majority of cases to found a conviction on retracted confessions which are not corroborated by credible independent evidence.<sup>5</sup> A retracted confession may be taken into consideration, that is, used as evidence, not only as against the person making it, but as against persons *tried jointly* with the confessing accused for the same offence. As regards the person making it, a retracted confession may, even without any corroborative evidence, form the basis of a conviction. As regards the other co-accused, although corroborative evidence may be necessary, it is not necessary that such corroborative evidence should by itself be sufficient to support a conviction; and that a conviction based on the unsupported evidence afforded by the confession of a co-accused would not be unlawful.<sup>6</sup>

The same is the view of the Madras High Court. It holds that it cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by an accused cannot be accepted as evidence of his guilt without independent corroborative evidence. The weight to be given to such a confession must depend upon the circumstances under which it was retracted including the reasons given by the accused for his retraction.<sup>7</sup> Where the only evidence against two persons accused of murder directly implicating them in the commission of the crime consisted of confessional statements made by them before the committing Magistrate, which were subsequently retracted, and the statements in such confessions were corroborated in material particulars by other evidence on the record, it was held that the evidence was sufficient to support a conviction.<sup>8</sup> A retracted confession is of little value against a co-accused and the fullest corroboration is necessary—far more than would be demanded for the sworn testimony of an accomplice on oath.<sup>9</sup>

The Calcutta High Court has ruled that it is not safe to convict an accused on his retracted confession standing by itself uncorroborated.<sup>10</sup> A retracted con-

<sup>1</sup> *Gangappa*, (1913) 38 Bom. 156, 15 Bom. L. R. 975; *Sabitkhan*, (1919) 21 Bom. L. R. 448, 43 Bom. 739; *Rama Kariyappa*, 31 Bom. L. R. 565; *Bhagwandas Bisesar*, (1940) 42 Bom. L. R. 938.

<sup>2</sup> *Bhagwandas Bisesar*, sup.

<sup>3</sup> *Maiku Lal*, (1897) 20 All. 133; *Rajhak*, (1926) 1 Luck. 577.

<sup>4</sup> (1886) 10 Mad. 295, 313.

<sup>5</sup> Per Banerji, J., in *Mahabir*, (1895)

18 All. 78, 81.

<sup>6</sup> *Kehri*, (1907) 29 All. 434; *Ataya*, (1914) P. R. No. 5 of 1911; *Nga Aung Thein*, (1901) 1 L. B. R. 133.

<sup>7</sup> *Raman*, (1897) 21 Mad. 83, 88.

<sup>8</sup> *Raru Nayir*, (1896) 19 Mad. 462. See *Rangi*, (1886) 10 Mad. 295; *Bharmappa*, (1888) 12 Mad. 123.

<sup>9</sup> *Muneyya*, [1938] Mad. 343.

<sup>10</sup> *Jaihub Das*, (1899) 27 Cal. 295.

cession should carry practically no weight as against a person other than the maker, it is not made on oath, it is not tested by cross-examination, and its truth is denied by the maker himself, who has thus lied on one or other of the occasions. The very fullest corroboration would be necessary in such a case, far more than would be demanded for the sworn testimony of an accomplice on oath.<sup>1</sup>

The Nagpur High Court has held that when it is possible to come to the conclusion that a retracted self-inculpatory confession cannot be otherwise than true it may be taken into consideration in connection with the evidence appearing in the case against the person making it as also against another person therein implicated, though it should be used with caution.<sup>2</sup>

**Custody of accused after confession.**—A confessing accused must invariably be sent to the judicial lock-up as soon as possible after confession, and on no account be returned to police custody. If the police thereafter want the accused for any particular purpose, they must put in an application stating the purpose for which the accused is required, and for that purpose he may be handed over to the police. But even then there certainly ought to be an interval between the taking of the confession and the handing over of the accused to the police for any subsequent purpose.<sup>3</sup>

**165. (1)** Whenever an officer in charge of a police-station or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits<sup>1</sup> of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may after recording in writing his reasons for so doing require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing specifying the place to be searched and, so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 102 and section 108 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate :

<sup>1</sup> *Lalit Mohan Chaudhary*, (1911) 38 Cal. 559; *Yasin*, (1901) 28 Cal. 689; *Kashimuddin*, (1934) 62 Cal. 812.

<sup>2</sup> *Abdul Gaffoor*, [1941] Nag. 169, dissenting from *Kashimuddin*, sup.

<sup>3</sup> *Surat Singh*, [1937] Lah. 740.

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

**COMMENT.**—Sub-section (1).—This section now authorizes a general search on the chance that something might be found. But the officer acting under this sub-section or sub-section (3) must record in writing his reasons for the making of a search; and under sub-sections (1) and (3) the thing shall be specified as far as possible.

1. 'Within the limits.'—The officer has no power to make a search beyond the local limits of his own circle. But in certain cases a search within the limits of another police-station is now authorized [see s. 166 (3)].

166. (1) An officer in charge of a police-station or a police-officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in section 165, sub-sections (1) and (3).

(5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

**COMMENT.**—Sub-sections (3) and (4).—These two sub-sections give power in certain circumstances to an officer in charge of a police-station to search or cause to be searched places within the local limits of another police-station.

167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station

Procedure when investigation cannot be completed in twenty-four hours.

or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit,<sup>1</sup> for a term not exceeding fifteen days in the whole.<sup>2</sup> If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Provincial Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

COMMENT.—This section prescribes the procedure when investigation of an offence cannot be completed in twenty-four hours. Section 344 similarly deals with the power of remand. This section provides for cases which are under investigation by the police. Section 344 provides for cases in which inquiry or trial before the Magistrate has commenced or is about to commence. The remand under s. 344 is to jail and not to police custody.

Sub-section (1).—When any investigation cannot be completed in twenty-four hours and the accusation is well founded, the police-officer is required to send a copy of the entries in the diary relating to the case along with the accused to the nearest Magistrate. The object of requiring the accused to be produced before a Magistrate for purposes of remand is to enable the Magistrate to see that the remand is necessary.<sup>1</sup>

Sub-section (2).—The Magistrate to whom the accused is forwarded may authorize the detention of the accused for a term not exceeding fifteen days.

1. 'In such custody as such Magistrate thinks fit.'—The accused is detained in the custody of the police, or in such other custody as the Magistrate making the order thinks fit. Ordinarily, no doubt, he will be in the custody of the police. Such detention is altogether different from the custody in which an accused person is kept under remand given under s. 344 of the Code, which is the custody provided by the Legislature for under-trial prisoners.

2. 'Fifteen days in the whole.'—The period for which a Magistrate can authorize the detention of the accused in police custody is fifteen days in the whole, including one or more remands.<sup>2</sup>

Sub-section (3).—The Magistrate ordering the detention of the accused must record his reasons in writing.<sup>3</sup>

Legal advice.—The police have no right to refuse to allow the legal adviser of an accused person, remanded to their custody, to interview him, or his relatives

<sup>1</sup> *Bal Krishna*, (1930), 12 Bah. 435.  
<sup>2</sup> *Krishnaji P. Joglekar*, (1897) 28  
 Bom. 32; *Engadu*, (1887) 11 Mad. 98.

<sup>3</sup> *Bal Krishna*, sup; *Krishnaji P. Joglekar*, sup; *Daulat Ram*, (1938) 8  
 Luck. 518.

to supply him with food and clothing, as long as they satisfy themselves that no objectionable articles are supplied.<sup>1</sup>

**168.** When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Report of investigation by subordinate police-officer.

**COMMENT.**—Reports made by a police-officer in compliance with this section are not public documents within the meaning of s. 74 of the Indian Evidence Act, and consequently an accused person is not entitled, before trial, to have copies of such reports.<sup>2</sup>

**169.** If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station or to the police-officer making the investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial.

Release of accused when evidence deficient.

**COMMENT.**—This section enables the officer in charge of a police-station to release the accused, when there is no sufficient evidence, on his executing a bond to appear when required before a Magistrate.

**170.\* (1)** If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or commit him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

Case to be sent to Magistrate when evidence is sufficient.

**(2)** When the officer in charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

<sup>1</sup> *Amolak Ram*, (1930) 12 Lah. 211;  
*Llewellyn Evans*, (1926) 28 Bom. L. R.  
1043, 50 Bom. 741.

<sup>2</sup> *Arumugam*, (1897) 20 Mad. 189,  
F.B.

\* **Burma amendment.**—In Burma after the words “police-station” in sub-ss. (1) and (2) read the words “or an investigating officer not below the rank of Head Constable”.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(4) [*Repealed by s. 2 of Act II of 1926.*]

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

**COMMENT.**—This section requires the officer in charge of a police-station to send a case to a Magistrate when evidence is sufficient. This is the only section under which a police-officer can take recognizances from the accused for his appearance before a Magistrate.

Complainants and witnesses not to be required to accompany police-officer.

Complainants and witnesses not to be subjected to restraint.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer,

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond :

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Recusant complainant or witness may be forwarded in custody.

172. (1) Every police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Diary of proceedings in investigation.

(2) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court ; but, if they are used by the police-officer who made them, to refresh his memory,<sup>1</sup> or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

**COMMENT.**—This section shows what a "special" diary of a police-officer making an investigation should contain. Every police-officer making an investigation is to enter his proceedings in a diary which may be used at the trial or inquiry, not as evidence in the case but to aid the Court in such inquiry or trial.<sup>1</sup>

<sup>1</sup> *Dal Singh*, (1917) 19 Bom. L. R. 510, 44 Cal. 876, 44 I. A. 187.

The object of recording "case diaries" under this section is to enable Courts to check the method of investigation by the police.<sup>1</sup>

**Scope.**—The section does not deal with the recording of any statement made by witnesses. Oral statements of witnesses should not be recorded in the diary.<sup>2</sup>

A diary kept under this section cannot be used as evidence of any date, fact or statement contained therein, but it can be used for the purpose of assisting the Court in the enquiry or trial by enabling it to discover means for further elucidation of points which need clearing up before justice can be done.<sup>3</sup>

**Sub-section (1).**—The diary referred to in this section is the "special diary" known as the "station-house report." All police-officers in charge of a police-station are required to keep a diary, and the Magistrate of the district is authorized to call for and inspect the same.

**Sub-section (2).**—"The early stages of the investigation which follows on the commission of a crime must necessarily in the vast majority of cases be left to the Police, and until the honesty, the capacity, the discretion and the judgment of the Police can be thoroughly trusted, it is necessary for the protection of the public against criminals, for the vindication of the law, and for the protection of those who are charged with having committed a criminal offence that the Magistrate or Judge before whom the case is for investigation or for trial should have the means of ascertaining what was the information, true, false, or misleading, which was obtained from day to day by the Police officer who was investigating the case, and what were the lines of investigation upon which such Police officer acted. A properly kept special diary would afford such information, and such information would enable the Magistrate or Judge to determine whether persons referred to in the special diary, but not sent up as witnesses by the Police, should be summoned to give evidence in the interests of the prosecution or of the accused. It must be always remembered that it is the duty of the Magistrate or of the Judge before whom a criminal case is, to ascertain if possible on which side the truth is and to decide accordingly. It must happen that a Police officer, who is investigating a criminal case, receives some true information, some false information, and some misleading information, and it must happen that such Police officer forms, no doubt sometimes prematurely, a theory about the case, to which having committed himself he probably adheres. An ordinary knowledge of the infirmities of human nature and a knowledge of what does in fact take place in some cases teach us that in many cases the inclination of a Police officer, who in his early investigation of a criminal case has committed himself honestly or dishonestly to a theory as to the case, is to work the case so as to support that theory, whether the vindication of justice is to be the result or not. It is consequently essential that the Magistrate or the Judge, who has to hold the scales of justice evenly between the Crown and the accused, should have some means of ascertaining what was the information obtained by the Police officer each day in the course of the investigation and what were the lines upon which the investigation proceeded. It is also necessary in the interests of the public that Magistrates of Districts and District Superintendents of Police should have some means of informing themselves of the proceedings of the Police within their districts in the investigation of crimes and of ascertaining what information, whether derived from personal observation or from statements made to the Police officer making an investigation under chapter XIV of the Code of Criminal Procedure, such Police officer has obtained."<sup>4</sup>

<sup>1</sup> *Peary Mohan Das v. D. Weston*, (1911) 16 C. W. N. 145.

<sup>2</sup> *Dadan Gasi*, (1906) 33 Cal. 1028.

<sup>3</sup> *Ahmed Miya*, [1944] 1 Cal. 183.

<sup>4</sup> *Per Edge, C. J.*, in *Mannu*, (1897) 19 All. 390, 397, 398, F.B.

Although this sub-section does not apply in terms to the police diary in a counter-case, the principles underlying that section should be applied in connection with such and other connected diaries. Even if it is a matter of discretion, failure of the Court to exercise it properly in calling for the police diaries in a counter-case may lead to a serious error and vitiate the trial.<sup>1</sup>

1. 'If they are used by the police-officer, who made them to refresh his memory, etc.'—The special diary is absolutely privileged from inspection by an accused person, or his agent. If the special diary is used by the Court to contradict the police-officer who made it, or by the police-officer who made it to refresh his memory, the accused person or his agent has a right to see that portion of the diary which has been referred to for either of these purposes, that is to say, the accused person or his agent is entitled to see the particular entry which has been referred to and so much of the diary as in the opinion of the Court is necessary in that particular matter to the full understanding of the particular entry so used, but no more.<sup>2</sup>

Police diaries are not evidence of the matter stated therein. The facts stated therein must be proved by examining the writer as a witness.<sup>3</sup> They cannot be used for the purpose of testing the credibility of witnesses.<sup>4</sup>

173. (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall—

Report of police-officer.

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Provincial Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial:

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

COMMENT.—There are three different kinds of reports to be made by police-officers at three different stages of investigation. (1) Section 157 requires

<sup>1</sup> *Ahmed Miya*, [1944] 1 Cal. 183.

<sup>2</sup> *Dal Singh*, (1917) 44 Cal. 876.

<sup>3</sup> *Mannu*, (1897) 19 All. 380, F.B.; 19 Bom. L. R. 510, 44 I. A. 187.

*Nga Lun Thong*, (1935) 18 Ran. 570, F.B.

<sup>4</sup> *Ibid.*



a preliminary report from the officer in charge of a police-station to the Magistrate. (2) Section 168 requires reports from a subordinate police-officer to the officer in charge of the station. (3) Section 173 requires a final report of the police-officer as soon as investigation is completed to the Magistrate.

Sub-section (1).—The report under this section is called "Completion Report." It is also known as "charge-sheet." Such a report is absolutely necessary.<sup>1</sup> A Magistrate who has disposed of a police report is competent to revise his order and call for a "charge-sheet."<sup>2</sup>

The police "charge-sheet" corresponds to the complaint of a 'private individual on which criminal proceedings are initiated. When the charge-sheet is sent the preliminary stage of investigation and preparation is over. Upon its receipt the Magistrate can take cognizance of the offence under s. 190(b).

Sub-section (4).—The accused is under this sub-section entitled to a copy of the charge-sheet.

174. (1) The officer in charge of a police-station or some other

Police to inquire police-officer specially empowered by the Provincial and report on suicide, etc. Government in that behalf, on receiving information that a person—

(a) has committed suicide, or  
(b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence, shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Provincial Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the Provincial Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Provincial Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall

<sup>1</sup> *Appa Bagho*, (1914) 17 Bom. L. R. 69.

<sup>2</sup> *Uma Singh*, (1932) 12 Pat. 234.

then report the result to the nearest Magistrate authorized to hold inquests.

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, and any Magistrate especially empowered in this behalf by the Provincial Government or the District Magistrate.

**COMMENT.**—Sections 174, 175, and 176 deal with inquests or inquiries into sudden, violent, or unnatural deaths. Section 174 provides for such inquiries by the police: section 176, by Magistrates. The police-officer making an inquiry under this section cannot order the exhumation of a human body, but a Magistrate can do so under s. 176.

**Inquest in presidency-towns.**—In the presidency-towns of Bombay and Calcutta the Coroner holds inquests, and not the police, under the Coroners Act (IV of 1871). In Madras the office of Coroner has been abolished by Act V of 1889.

**Presidency Magistrate can hold inquiry after Coroner's inquest.**—A Presidency Magistrate is not ousted of his jurisdiction because the Coroner has held an inquiry into the cause of death of a person and drawn up an inquisition. He is competent to hold a preliminary inquiry even though the accused has been committed to the High Court by the Coroner.<sup>1</sup> He is in no way bound by the Coroner's proceedings.<sup>2</sup> No analogy exists between a Coroner's inquest and an inquiry into the cause of death under the Criminal Procedure Code.<sup>3</sup>

**175. (1)** A police-officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions<sup>1</sup> other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

**COMMENT.**—1. 'Bound...to answer truly all questions.'—The witnesses must answer all questions. Refusal to answer questions is punishable under s. 179 of the Penal Code. Again, the person examined at an inquest is bound to answer truly all questions other than those the answers to which would be incriminating. Section 161 imposes no such obligation to speak the truth. A witness speaking falsely under this section commits the offence of intentionally giving false evidence punishable under s. 193 of the Indian Penal Code.

**176. (1)** When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer, and, if he does so, he shall have all the powers in conducting it which

<sup>1</sup> *Mahomed Rajudin*, (1890) 16 Bom. 540, Cr. R. No. 14 of 1891.

<sup>2</sup> *Troylokhanath Biswas*, (1878) 3

<sup>3</sup> *John Paul*, (1891) Unreg. Cr. C. Cal. 742.

he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Power to disinter  
corpses.

**COMMENT.**—Under this section when any person dies while in the custody of the police it is obligatory on the nearest Magistrate to hold an inquest. In any other case mentioned in s. 174, sub-s. (1), the Magistrate may hold an inquest either instead of, or in addition to, the investigation held by the police-officer.

Proceedings under this section are judicial proceedings and the High Court exercises its jurisdiction over such proceedings under ss. 435 and 439 or under s. 561A of the Code.

## PART VI.

### PROCEEDINGS IN PROSECUTIONS.

#### CHAPTER XV.

##### OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

###### *A:—Place of Inquiry or Trial.*

"The scheme of chapter 15, sub-chapter (A) in which sections 177 to 189 appear, seems to me to be intended to enlarge as much as possible the ambit of the sites in which the trial of an offence might be held and to minimise as much as possible the inconvenience which would be caused to the prosecution, by the success of a technical plea that the offence was not committed within the local limits of the jurisdiction of the trying Court. Sections 178 to 184 all confer more extended powers and larger jurisdiction to Courts than would belong to them if the ordinary rule found in section 177, (namely, that the enquiry and trial shall take place in the Court within the local limits of whose jurisdiction the offence was committed)...were carried to its strict logical conclusions."<sup>1</sup>

177. Every offence shall ordinarily<sup>1</sup> be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

**COMMENT.**—The competency of a forum to take cognizance of an inquiry into, and trial of, an offence, as defined by s. 4 of the Code, is determined by the place in which the offence may have been committed.<sup>2</sup> Crimes are in their nature local; and the jurisdiction of crimes is local.<sup>3</sup> A Magistrate, within whose local

<sup>1</sup> *Assistant Sessions Judge, North Arcot v. Ramaswami Asari*, (1914) 38 Mad. 779, 782.

<sup>2</sup> *Shrikh Rakrudin*, (1884) 9 Bom. 46.  
<sup>3</sup> *Rafael v. Verelst*, (1776) 2 Wm. Bl. 1055.

jurisdiction the offence is committed, is authorised to take cognizance and to try the case or to commit it to the Court of Session. The subsequent transfer of the locality to another district does not oust the jurisdiction of the Magistrate.<sup>1</sup> A Magistrate has no power to try an accused for an offence committed wholly outside the limits of his jurisdiction.<sup>2</sup>

1. 'Ordinarily.'—This word means "except in the cases provided herein-after to the contrary."<sup>3</sup> For example, see ss. 188 and 197 (2).

**Trial outside British India.**—A District Magistrate cannot legally dispose of a criminal case at a place not in British India.<sup>4</sup>

**Power of High Court to change jurisdiction.**—Under s. 526(1) (i) the High Court may order that any offence be inquired into or tried by any Court not empowered under ss. 177 to 184, but in other respects competent to inquire into or try such offence.

**Proceedings in wrong place.**—Under s. 531 no finding, sentence or order of any criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

**Cases.**—**Trial by Court within whose jurisdiction offence is committed.**—Where a recruiter induced a person at Cawnpore to go to Fiji, but on the way took him to a coolie depot at Arrah and induced him to proceed to Sylhet, in contravention of the Assam Labour and Emigration Act, it was held that the offence was committed at Arrah and not at Cawnpore, and the Magistrate at Arrah had jurisdiction to try the offence.<sup>5</sup>

**Place of offence ceasing to be British territory.**—An offence was committed at a place which was a part of the Mirzapur District. Subsequently one of the persons alleged to have taken part in the commission of such offence was arrested in Bengal and sent to Mirzapur, where he was committed by the Joint Magistrate to take his trial before the Court of Session. Meanwhile the place where the offence was committed had ceased to be British territory. It was held that this fact did not oust the jurisdiction of either the Magistrate or the District Judge of Mirzapur.<sup>6</sup>

178. Notwithstanding anything contained in section 177, the

Provincial Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division :

Power to order cases to be tried in different sessions divisions.

Provided that such direction is not repugnant to any direction previously issued by the High Court under section 15 of the Indian High Courts Act, 1861, or section 107 of the Government of India Act, 1915, or section 224 of the Government of India Act, 1935, or under this Code, section 526.

**COMMENT.**—This section gives power to the Provincial Government to order cases to be tried in different sessions divisions.

<sup>1</sup> *Sayer Uddin Pramanik*, [1938] 2 Cal. 357.

<sup>2</sup> *Goverdhan Bidkaran*, (1928) 30 Bom. L. R. 387; *Mohanlal Aditram*, (1928) 30 Bom. L. R. 1253; *Musammatt Bhagwati*, (1924) 3 Pat. 417.

<sup>3</sup> *Goverdhan Bidkaran*, sup.; *Ram-*

*narayan Kapur*, (1936) 39 Bom. L. R. 61, [1937] Bom. 244.

<sup>4</sup> *Maneklal*, (1888) Unrep. Cr. C. 376.

<sup>5</sup> *Fais Ali*, (1909) 37 Cal. 27.

<sup>6</sup> *Ganga*, (1912) 34 All. 451; *Mahabir*, (1911) 33 All. 578; *Ram Nareek Singh*, (1911) 34 All. 118.

Section 527 of the Code empowers the Provincial Government to transfer a criminal case from one High Court to another High Court or from any criminal Court subordinate to one High Court to any other criminal Court subordinate to another High Court.

Section 528 empowers the Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate to withdraw or recall any case from any Magistrate subordinate to him and to inquire into such case himself or refer it for inquiry to any other Magistrate.

179. When a person is accused of the commission of any offence by reason of anything which has been done,<sup>1</sup> and of any consequence which has ensued,<sup>2</sup> such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.<sup>3</sup>

#### ILLUSTRATIONS.

(a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y, or Court Z, to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(d) A is wounded in the Native State of Baroda, and dies of his wounds in Poona. The offence of causing A's death may be inquired into and tried in Poona.

COMMENT.—Under this section a person accused of the commission of an offence is triable by a Court within the local limits of whose jurisdiction the act amounting to the offence has been done or the consequence of that act has ensued.

Scope.—This section and s. 181(2) are not mutually exclusive in the sense that if one section applies, the other can never possibly apply. These sections have obviously a cumulative effect and it is not accurate to say that this section either controls or is controlled by s. 181.<sup>4</sup>

1. 'Anything which has been done.'<sup>5</sup>—This phrase means some act constituting the offence or any part of it.

2. 'Any consequence which has ensued.'<sup>6</sup>—The 'consequence' must form part of the offence charged.<sup>7</sup> The section contemplates cases where the act done, and the consequence ensuing therefrom, together constitute the offence. The 'consequence' contemplated must be a necessary ingredient of the offence. If the offence is complete in itself by reason of the act having been done, and the

<sup>1</sup> *Kashi Ram Mehta*, (1934) 56 All. 1047, F.B.

<sup>2</sup> *Jivandas Savchand*, (1930) 55 Bom. 59, 32 Bom. L. R. 1195, F.B., overruling *Ramratn Chuntal*, (1921) 24 Bom. L.R. 46, 46 Bom. 641; *Rambilas*, (1914) 38

Mad. 639; *Krishnamachari v. Shaw*, *Wallace & Co.*, (1915) 39 Mad. 576; *Simhachalam*, (1916), 44 Cal. 912; *Ahmed Ebrahim v. Hajek A. A. Ganny*, (1923) 1 Ran. 56, 59.

consequence is a mere result of it which was not essential for the completion of the offence, then this section would not be applicable. In the case of criminal misappropriation or criminal breach of trust the offence is complete as soon as there is a misappropriation or conversion with a dishonest intention, i.e. the intention of causing wrongful gain or wrongful loss. It is not necessary for the completion of the offence that loss to the owner should have actually accrued by that time. Loss to the owner, therefore, is not the kind of 'consequence' contemplated by this section, and the section will not confer jurisdiction for trial at the place where the loss to the owner may ensue.<sup>1</sup>

3. 'By a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.'—Illustration (d) is an instance of a criminal act done outside British India and the consequences of the offence ensuing in British territory. It shows that where the accused commits an act in an Indian State and the consequences ensue in British India, the British Indian Courts have jurisdiction to try the accused if he is found in British India. But if a foreign subject, resident in a foreign territory, instigates the commission of an offence which, in consequence, is committed in British territory, he is not amenable to the jurisdiction of a British Court because the instigation has taken place outside British India.<sup>2</sup>

Cases.—Instigation by letter.—Where one person instigates another to the commission of an offence by means of a letter sent through the post, the offence of abetment by instigation is completed so soon as the contents of such letter become known to the addressee, and such offence is triable at the place where such letter is received.<sup>3</sup>

Hurt caused in foreign territory.—The complainant was assaulted by the accused within the Baroda territory, and his leg was completely broken in that territory. He was brought into a hospital within the British territory in consequence of this injury, where he was detained for fifty-seven days, during which period he was unable to follow his ordinary pursuits. He filed a complaint for grievous hurt in a British Court. It was held that the Court could not proceed with the trial under this section since the injury that was done, viz. the fracture of the leg, was complete within the Baroda territory.<sup>4</sup>

Consequence of criminal breach of trust must take place within jurisdiction of trial Court.—One M was employed as an agent by a firm in Mirzapur. Goods were entrusted to him for sale in various districts in Lower Bengal, and from time to time, as he sold goods, he remitted moneys to his employers at Mirzapur. When called upon to furnish accounts, he offered to furnish Rs. 500 as a deposit, but did not submit any account. It was held that the Courts at Mirzapur had jurisdiction to try M for whatever offence he had committed arising out of the above transactions.<sup>5</sup> A entrusted three jewels at Vellore to the accused, a native Indian subject, for sale. The accused pledged two of them in Bangalore and misappropriated the third at Madras, contrary to the arrangement that he should return the jewels or their price to A at Vellore. It was held that the British Court at Vellore had jurisdiction to try the accused for breach of trust or dishonest misappropriation.<sup>6</sup> The accused who was living at Nandyal was appointed agent by

<sup>1</sup> *Kashi Ram Mehta*, (1934) 56 All.

1047, F.B., overruling *Langridge v.* L. R. 513.

*Atkins*, (1912) 35 All. 29; *Rich*, (1930)

52 All. 894.

<sup>2</sup> *Pirtai*, (1878) 10 B. H. C. 356.

<sup>3</sup> *Sheo Dial Mal*, (1894) 16 All. 389.

<sup>4</sup> *Sirdar v. Jethabhai*, (1906) 8 Bom.

L. R. 513.

<sup>5</sup> *Mahadeo*, (1910) 32 All. 897.

<sup>6</sup> *Assistant Sessions Judge, North*

*Arco v. Ramanwami Asari*, (1914) 38 Mad. 779.

the complainant, who resided at Madras, for selling oil. He failed to give proper account when asked for. It was held that the offence of criminal breach of trust was triable at Nandyal and not at Madras because the loss at Nandyal was the primary consequence.<sup>1</sup> Where the accused, brokers in Bombay, were charged in the Court of the Sub-divisional Magistrate at Erode with the offence of having committed criminal breach of trust in respect of the proceeds of certain hundis entrusted to them by the complainants, merchants at Dharapuram, for encashment at Bombay, it was held that the hundis having been cashed and the proceeds misappropriated by the accused in Bombay, the Erode Court had no jurisdiction to try the case.<sup>2</sup>

**Cheating.**—The accused posted three fraudulent value-payable parcels at Panvel addressed to persons residing at Poona, Sialkot, and Hissar, which were accepted and paid for at those places. He was charged at Panvel for the three offences of cheating in respect of the three parcels. It was held that the Panvel Court had jurisdiction, for the act of deceiving and the act of inducing delivery of property were composite acts which began with the delivery of the parcels to the Panvel post office for posting; that the Panvel Court had also jurisdiction under s. 182, cls. (2) and (4), since the offence was committed at Panvel by the posting of the parcels there, and partly at Poona, Sialkot and Hissar where the money was paid over by addressees to the post office.<sup>3</sup>

**180.** When an act is an offence by reason of its relation to any other act which is also an offence<sup>1</sup> or which would be an offence if the doer were capable of committing an offence,<sup>2</sup> a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Place of trial  
where act is offence  
by reason of relation  
to other offence.

#### ILLUSTRATIONS.

(a) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

**COMMENT.**—This section provides for a place of trial where the act committed is an offence by reason of its relation to any other act which is also an offence.

1. 'When an act is an offence by reason of its relation to any other act which is also an offence.'—Illustrations (a), (b) and (c) furnish examples of an act which is an offence by reason of its relation to any other act which is also an offence. The other act must be one committed in British territory.

Courts in British India have no jurisdiction to try a non-British subject for the abetment of an offence committed in British India in pursuance of the abetment done by his acts outside British India.<sup>4</sup>

<sup>1</sup> *Krishnamachari v. Shaw, Wallace & Co.*, (1915) 39 Mad. 576.

<sup>2</sup> *Rambilas*, (1914) 38 Mad. 639.

<sup>3</sup> *Y. A. Gafar*, (1930) 31 Bom. L. R. 785.

<sup>4</sup> *Hiralal*, [1945] Nag. 139.

**Stolen property.**—Under s. 410 of the Penal Code, "stolen property" has received a very wide meaning. It is immaterial whether the act by which the property becomes stolen property is committed within or without British India. But to give a British Court jurisdiction to inquire into the offence of dishonestly receiving or retaining stolen property, the receiving or retaining or the offence by which the owner was deprived of it must have been committed within its jurisdiction.

**Cases.**—**Offence committed in Indian State by retention of stolen property in British India.**—Where a dacoity was committed at Velanpor, a village in the territory of the Gaikwar of Baroda, and a part of the stolen property found, where it had been concealed by the accused, in British territory, it was held that the conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpor, although, had Velanpor been in British territory, the subsequent act in the process of taking away the property might in the legal sense have coalesced with the first and principal one, so as to give jurisdiction in each district into which the property was conveyed. The High Court upheld the conviction for retaining stolen property.<sup>1</sup> A Nepalese subject, having stolen cattle in Nepal, brought them into British territory, where he was arrested, and sentenced to one year's rigorous imprisonment. It was held that he could not be tried for the theft itself, but that he might be convicted of dishonestly retaining the stolen property.<sup>2</sup> Two persons, B, who was not a British subject, and R, who was, were committed to the Court of Session at Jhansi, it being alleged against them that they had committed a robbery in an adjoining Indian State and had brought the stolen property into British territory. It was held that though neither could be tried by the Sessions Judge of Jhansi for the robbery, B because he was not a British subject, and R because the certificate required by s. 188 of the Code was wanting, yet both might be tried for the offence of retaining stolen property.<sup>3</sup>

**Offence committed in British India but receipt of stolen property in foreign territory.**—Certain persons, who were not proved to be British subjects, were found in possession, in an Indian State, of property the subject of a dacoity committed in British India. They were not proved to have taken part in the dacoity, and there was no evidence that they had received or retained any stolen property in British India. They were convicted of offences punishable under s. 412 of the Penal Code. It was held that no offence was proved to have been committed within the jurisdiction of a British Court.<sup>4</sup>

2. 'Which would be an offence if the doer were capable of committing an offence.'—See ss. 76-106 of the Indian Penal Code.

**181. (1)** The offence of being a thug, of being a thug and committing murder, or dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.<sup>1</sup>

**(2)** The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the

<sup>1</sup> *Lakhya Govind*, (1875) 1 Bom. 50 ;  
*Adilgadu*, (1876) 1 Mad. 271.

<sup>2</sup> *Sunker Gope*, (1880) 6 Cal. 307.

<sup>3</sup> *Baldawa*, (1906) 28 All. 372.

<sup>4</sup> *Kirpal Singh*, (1887) 9 All. 528 ;  
*Moheshwari Prasad Singh*, (1914) 18  
C. W. N. 1178.



offence was committed.

(3) The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

(4) The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

**COMMENT.**—This section determines the place of trial where the offences committed are (1) being a thug; (2) dacoity; (3) escape from custody; (4) criminal misappropriation; (5) criminal breach of trust; (6) theft; (7) kidnapping; and (8) abduction.

**Sub-section (1).**—As to the offence of being a thug, see. s. 311 of the Indian Penal Code; as to dacoity, s. 395; as to escape from custody, s. 224.

1. 'The person charged is.'—The accused must be a British subject. A British Court has no jurisdiction over a foreigner for an offence committed by him in a foreign territory.<sup>1</sup>

**Sub-section (2).**—As to criminal misappropriation, see s. 403, Penal Code; as to criminal breach of trust, see s. 406. It is not essential that at the time the property is said to have been received or retained by the accused person he must have a dishonest intention to misappropriate it or to commit criminal breach of trust with reference to it. It is enough if the property which is the subject of the offence was received or retained by the accused at a particular place to give jurisdiction to the Magistrate of that place to try the case.<sup>2</sup>

Where there is only a liability to account at a certain place, and no duty to deliver at that place the money or property which is the subject of an alleged offence of criminal breach of trust, the criminal Court at the place where the accounting alone is to be done has no jurisdiction under this clause to try the offence. There is a clear distinction between mere liability to account at a particular place and the further duty to deliver property at that place. An agreement to render accounts at a particular place cannot be deemed to include in every case a further agreement to hand over or deliver any money or property at that place.<sup>3</sup>

**Cases.**—**Property retained.**—Where a firm carrying on business at Ferozepore employed A as purchasing agent in the district of Jhang and prosecuted him at Ferozepore for criminal misappropriation in respect of a balance which was payable at Ferozepore, it was held that the balance was retained at Ferozepore and that the Court at Ferozepore had jurisdiction.<sup>4</sup> The accused hired a bicycle at Poona, and, instead of returning it in accordance with his written contract, took it to Yeola and deposited it with a third person for an advance of Rs. 6. It was held that the Magistrate at Poona had jurisdiction as it was not essential when the bicycle was taken that the accused should have a dishonest intention to misappropriate it or to commit criminal breach of trust with reference to it.<sup>5</sup>

<sup>1</sup> See *Pirtai*, (1873) 10 B.H.C.R. 356; *Ranchhod Daya*, (1900) 2 Bom. L. R. 387.

<sup>2</sup> *Lazman*, (1926) 51 Bom. 101, 28 Bom. L. R. 1292.

<sup>3</sup> *Fateh Singh*, [1940] All. 48, *Mohru*

*Lal*, (1935) 58 All. 644, doubted.

<sup>4</sup> *Uttam Chund*, (1901) P. R. No. 2 of 1902.

<sup>5</sup> *Lazman*, (1926) 51 Bom. 101, 28 Bom. L. R. 1292.

The complainant entered into a partnership with the accused in Bombay to carry on rice business at Rangoon. The accused was to manage the business at Rangoon. The head office was to be in Bombay and the accused was to send weekly statements of accounts and of business done. The accused misappropriated the firm's moneys and falsified the accounts, and was prosecuted in Bombay under ss. 405 and 477A, Penal Code. It was held that the Bombay Court had no jurisdiction to try the offence of criminal breach of trust which occurred at Rangoon; and that the obligation to send the accounts to Bombay did not give it jurisdiction; that the falsification of accounts having been made at Rangoon the Bombay Court could not try the accused for that offence as well.<sup>1</sup> The accused, an employee of the complainant at Akyab, was sent to Cochin, there to receive consignments of rice shipped by the complainant's firm from Rangoon and Akyab and to sell the rice. The accused was to submit accounts and pay the net cash balance resulting from the sales to the complainant's firm at Akyab. Instead of doing so the accused went away to his native country from Cochin without returning to Akyab to account for and pay in the moneys which came into his hands in the business at Cochin. The complainant filed a complaint for criminal breach of trust against the accused before a Magistrate at Akyab. It was held that the Magistrate at Akyab had no jurisdiction to try the offence, as it was not committed in Akyab. Although a person may have to account for money, it is not the failure to account, but the misuse of the money for dishonest purposes, which constitutes the offence. The money was not received or retained by the accused at Akyab. Further the failure by the accused to remit or bring the money occurred at the place where the accused was, and not in the place where the money was to be sent or brought.<sup>2</sup>

Where the complainant had posted at Muzaffarnagar postal orders for a certain amount, as entry fee for a crossword competition, to the "*Illustrated Weekly of India*," and the accused was the editor in Bombay in charge of the competition, and the complainant alleged that the money was misappropriated by him, it was held that the misappropriation, if any, took place in Bombay and not at Muzaffarnagar, even on the supposition that the letter containing the postal order became the property of the addressee as soon as it was posted at Muzaffarnagar; for, according to that supposition, the money was received at Muzaffarnagar by the addressee, but it was received and misappropriated, if at all, by the accused in Bombay. The offence was not triable at Muzaffarnagar but in Bombay.<sup>3</sup>

Sub-section (3).—As to stealing, see ss. 378, 410, 411, of the Penal Code. The offence of theft or the possession of stolen property can be tried by a Magistrate within whose jurisdiction either of the two offences is committed. This sub-section gives jurisdiction to British Indian Courts to inquire into an offence of theft committed outside British India provided the stolen property was possessed in British India either by the thief or by any person who received or retained the same knowing it to be stolen.

Case.—Where the accused, a subject of an Indian State, committed theft at Rajkot civil station, and was found in possession of stolen property at Thana, it was held that as the offence was not committed in British India, and as the accused was the subject of an Indian State, the Sessions Court at Thana had no jurisdiction to try the accused for theft, but it was competent to try him for dishonest retention of stolen property.<sup>4</sup>

<sup>1</sup> *Jivandas Saachand*, (1930) 32 Bom. L. R. 1195, 55 Bom. 59, F.B.; *Dattiyari Tripatti v. Subodh Chandra Chaudhuri*, 1942] 2 Cal. 507.

<sup>2</sup> *Khimjee v. Tokersey*, [1888] Ran. 1.

<sup>3</sup> *G. A. St. George v. Uma Dutt Sharma*, [1939] All. 851.

<sup>4</sup> *Abdul Latif*, (1885) 10 Bom. 186.

Sub-section (4).—As to kidnapping, see ss. 359, 360, 361 of the Indian Penal Code; as to abduction, see s. 362.

Case.—A married young woman, who was discarded by her husband, lived with her father and brother in Madras. She became intimate with the accused who was her next door neighbour. The two ran away from Madras in a motor car, flew to Bangalore in an aeroplane, and eventually settled in Bombay. The accused was convicted of kidnapping by a Presidency Magistrate, Bombay. It was held that the alleged taking and the enticing of the woman, if there was any, having taken place in Madras, the Magistrate in Bombay had no jurisdiction to try the offence.<sup>1</sup>

182. When it is uncertain in which of several local areas an offence was committed,<sup>1</sup> or

Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts.

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

COMMENT.—This section provides for the difficulty which may arise where there is a conflict between different areas, and there may be some doubt as to what particular Magistrate has jurisdiction to try the case. Each portion of the section refers to this conflict.<sup>2</sup> The section provides for four contingencies—

(1) When it is uncertain in which of several local areas an offence is committed;

(2) where an offence is committed partly in one local area and partly in another;

(3) where an offence is a continuing one, and continues to be committed in more local areas than one; and

(4) where an offence consists of several acts done in different local areas.

This section lays down that in any of the above four cases the offence may be inquired into or tried by a Court having jurisdiction over any of such local areas.

1. 'Uncertain in which of several local areas an offence was committed.'—The words "local area" only apply to a "local area" to which the Criminal Procedure Code applies, and not to a local area in a foreign country or in other portions of the British Empire to which the Code has no application.<sup>3</sup>

When there is an uncertainty as to whether a particular spot where an offence has been committed is situated within one district or another, the case is governed by this section, and the offence is triable in the Court of either district. The expression "local area" includes, and was intended to include, a "district."<sup>4</sup> Section 581 clearly shows that a sessions division, district, or sub-division is, within the meaning of the Act, intended to be included in the term "local area."<sup>5</sup>

<sup>1</sup> *Ramnarayan Kapur*, (1936) 39 Bom. L. R. 61, [1937] Bom. 244.

<sup>2</sup> *Bichitranund Dass v. Bhugbut Perai*, (1889) 16 Cal. 667, 676; *Debendra Nath Das v. Registrar of Joint Stock Companies*, 1917) 45 Cal. 490.

<sup>3</sup> *Bichitranund Dass v. Bhugbut Perai*, sup.

<sup>4</sup> *Punardeo Narain Singh v. Ram Sarup Roy*, (1898) 25 Cal. 848.

<sup>5</sup> *Ibid.*

**Cases.—Cheating.**—The accused residing at N, sent a letter to a merchant in B, ordering goods from him and promising to pay his bill on receipt of the goods. When the goods were received he accepted them and absconded without making payment. A complaint of cheating was filed against the accused in a Magistrate's Court at N, when the accused objected that the Magistrate had no jurisdiction to entertain the complaint. It was held that the Magistrate had jurisdiction under this section to entertain the complaint, because the posting of the order by the accused at N was one of the series of acts which went to make up the offence of cheating.<sup>1</sup>

**Abetment of forgery.**—The accused, who lived at Cambay, an Indian State, conspired with his partner A, at Cambay, to get a valuable security forged by a professional forger at Umreth, a place within British territory. To facilitate forgery, the accused sent a khata-book with A, who proceeded to Umreth and had the document forged there accordingly. The accused was committed for trial to the Sessions Court on a charge of abetment of forgery of a valuable security (ss. 467 and 109, Indian Penal Code). The Sessions Judge, being of opinion that the British Court had no jurisdiction to try the accused, referred the case to the High Court for an order quashing the commitment. It was held that the British Court had jurisdiction to try the accused, inasmuch as his offence was not wholly committed within Cambay territory but having been initiated there was continued and completed within British territory.<sup>2</sup>

**183.** An offence committed whilst the offender is in the course of performing a journey or voyage<sup>1</sup> may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed<sup>2</sup> in the course of that journey or voyage.

**COMMENT.**—This section is intended to remove doubts and inconveniences as regards the exact locality in which the offences alleged to have occurred in a journey or voyage had been committed or completed.<sup>3</sup>

1. 'In the course of performing a journey or voyage.'—The words 'journey or voyage' do not include a voyage on the high seas or in a foreign territory, but are confined in their meaning to a journey or voyage within the territory of British India, as down the Ganges or the Buckingham Canal.<sup>4</sup> But see s. 188, *infra*, and s. 108A of the Indian Penal Code.

2. 'May be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender...passed.'—This section gives jurisdiction to the local tribunal at the place where the complainant or the offender first stops or breaks his journey. Where an offence was alleged to have been committed during a journey from Bombay to Calcutta, and was in fact committed between Bombay and Allahabad, at which latter place the complainant and the person by whom the offence was alleged to have been committed separated and proceeded to Howrah by different trains, it was held that the Magistrate of Howrah had no jurisdiction to try the charge. To bring the matter within his jurisdiction the journey should have been continuous from one terminus to the other without

<sup>1</sup> *Hormaji Mahadavala*, (1942) 45 Bom. L. R. 297.

<sup>2</sup> *Chhotatal Babar (No. 1)*, (1912) 14 Bom. L. R. 147.

<sup>3</sup> *Malony and Jones*, (1863) 1 M. H. C. R. 193.

<sup>4</sup> *Bapu Dalki*, (1882) 5 Mad. 23.

any interruption by either party.<sup>1</sup> The accused, an underguard in the service of the Madras Railway Company, was employed in that capacity on a passenger train from Coimbatore to Madras. Upon the arrival of the train at the Arkonam junction-station, he was drunk, violent and unsteady. To prevent his going on with the train, he was put in the charge of a peon; but as the train was starting he broke away, jumped into it, and so was taken on to Madras. He was tried at the criminal sessions of the Madras High Court, but it was held that the Court had no jurisdiction because it could not be said that any part of the journey on or during which the offence was alleged to have been committed by the accused was performed within the local limits of the Court's jurisdiction. The journey on which the offence was alleged to have been committed ended at Arkonam.<sup>2</sup> But a short halt in the course of a journey does not put an end to the journey and prevent the trial being held where it terminates. A box containing money having been missed during halt at Sumbhoogunge, from a boat which was on the way to Chittagong, and a question having been raised whether the charge of theft, which was based on the loss, should be tried at Tipperah or Chittagong, it was held that the journey was not broken by the halt, and that the case could be tried at Chittagong.<sup>3</sup> The complainant and the accused sailed from Bombay to Honawar in a boat. The latter threw overboard a box belonging to the former during the voyage within nine miles of the Janjira State. On arrival at Honawar, the complainant charged the accused with having committed mischief before the Magistrate at that place. It was held that the Magistrate at Honawar, through whose jurisdiction the accused passed on the voyage, had jurisdiction to try the offence.<sup>4</sup>

**184.** All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office or Arms and Ammunition may be inquired into or tried in a presidency-town, whether the offence is stated to have been committed within such town or not :

Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town. •

**COMMENT.**—This section lays down that offences against Railway, Telegraph, Post-office, and Arms Acts may be inquired into or tried in a presidency-town if the offender and all the witnesses are to be found within such town.

This section is analogous to ss. 238 and 239 of the Presidency Magistrates' Act (IV of 1877).

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

**185. (1)** Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.

**(2)** Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and, if it so decides all other proceedings

<sup>1</sup> *Piran*, (1874) 13 Beng. L. R. (App.) H. C. R. 193.  
<sup>2</sup> 21 W. R. (Cr.) 66.

<sup>3</sup> *Malony and Jones*, (1863) 1 M.

<sup>4</sup> *Abdul Ak*, (1876) 25 W. R. (Cr.) 46.  
<sup>5</sup> *Ismail*, (1882) Unrep. Cr. C. 181.

against such person in respect of such offence shall be discontinued. If such High Court, upon the matter having been brought to its notice, does not so decide, any other High Court, within the local limits of whose appellate criminal jurisdiction such proceedings are pending, may give a like direction, and upon its so doing all other such proceedings shall be discontinued.

**COMMENT.**—Sub-section (1).—This section is not restricted to cases in which there is a doubt as to whether one Court or another has jurisdiction but is applicable to a case in which the doubt is on the point whether the choice between two Courts both of which have jurisdiction, should be decided on the ground of “convenience” and “expediency.”<sup>1</sup>

**Sub-section (2).**—This sub-section makes it clear that one High Court has no power, whether by implication or otherwise, to transfer a case to itself from another High Court or vice versa, or to decide which of two other High Courts should try a particular case.<sup>2</sup>

The sub-section deals with the case of two or more Courts not subordinate to the same High Court with reference to the jurisdiction within which proceedings were first commenced.

**186. (1)** When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Provincial Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction<sup>1</sup> to inquire into or try such offence; or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

**(2)** When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

**COMMENT.**—This section empowers the Magistrate mentioned therein to inquire into an offence committed outside the local limits of his jurisdiction by a person found within his jurisdiction and to send such person to the Magistrate having jurisdiction to inquire into or try such offence.

**1.** ‘Send such person to the Magistrate having jurisdiction.’—That is, when the Magistrate making the inquiry is himself not a Presidency or District Magistrate he must send such person to the District or Sub-divisional Magistrate to whom he is subordinate (see s. 187, *infra*).’

<sup>1</sup> *Charu Chandra*, (1916), 44 Cal. 595, F.B.

<sup>2</sup> S. O. R. (1921). The conflict

between the decisions of the Calcutta and Madras High Courts is set at rest (44 Cal. 595, F.B., and 40 Mad. 835).

Magistrate can issue process while outside his jurisdiction.—It is not essential to the validity of a warrant issued that the Magistrate issuing it should be, at the time he issues it, within the local limits of his jurisdiction. He may issue a warrant from a place in a foreign territory.<sup>1</sup>

**187. (1)** If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued.

**(2)** If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

**COMMENT.**—The latter part of sub-section (1) should be read in conjunction with s. 86, *supra*.

**188.** When a Native Indian subject<sup>1</sup> of Her Majesty commits an offence<sup>2</sup> at any place without and beyond the limits of British India,<sup>3</sup> or when any British subject<sup>4</sup> commits an offence in the territories<sup>5</sup> of any Native Prince or Chief in India, or

when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India, or

when any person commits an offence on any ship or aircraft registered in British India wherever it may be,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :<sup>6</sup>

Provided that notwithstanding anything in any of the preceding sections of this Chapter<sup>7</sup> no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India ;<sup>8</sup> and, where there is no Political Agent, the sanction of the Provincial Government shall be required :<sup>9</sup>

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Indian Extradition Act, 1903, in respect of the same offence in any territory beyond the limits of British India.

<sup>1</sup> *Locha Kala*, (1876) 1 Ben. 340.

**COMMENT.**—This section provides for extra-territorial jurisdiction over British subjects. Compare s. 4 of the Indian Penal Code which gives extra-territorial jurisdiction in respect of acts committed outside British India by certain classes of persons including the Indian subjects of His Majesty. Under that section the acts alleged must amount to an offence under the Penal Code. Under this section 'offence' means an act or omission made punishable by any law for the time being in force (s. 4 (o)).

This section overrides s. 179 in any case where it applies.<sup>1</sup>

The section specifies three cases in which a British subject is liable for offences committed out of British India :—

(1) When a Native Indian subject commits an offence at any place outside British India ;

(2) when any British subject commits an offence in the territories of an Indian State ; and

(3) when a servant of the King, whether British subject or not, commits an offence in the territories of an Indian State.

**First clause.**—This clause provides that a Native Indian subject who commits an offence at any place outside British India may be dealt with in respect of such offence as if it had been committed in British India.

1. 'Native Indian subject.'—This expression has not been defined. A person can be proved to be a Native Indian subject of His Majesty either by birth or by descent or by naturalization. The term 'Native Indian subject' means only native subject *de jure* and not *de facto*, and occasional residences in British territory cannot be taken to render a person who is not *de jure* a subject for the purpose of criminal jurisdiction being exercised over him for an act committed by him in a foreign territory, which if committed within British territory would have been an offence cognizable by municipal Courts.<sup>2</sup>

2. 'Offence.'—The word "offence" means an act or omission made punishable by any law for the time being in force (s. 4 (o)). To attract the section it must be shown that an accused has been guilty of an act or omission made punishable by some law (that is, law applicable to British India) for the time being in force.<sup>3</sup>

3. 'Limits of British India.'—The expression "British India" means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor General of India or through any Governor or officer subordinate to the Governor General of India.<sup>4</sup>

**Civil stations.**—The civil stations at Rajkot,<sup>5</sup> Wadhwan,<sup>6</sup> and Bangalore<sup>7</sup> are not part of British India. The Code of Criminal Procedure is in force in the civil and military station of Bangalore by reason of declarations made by the Governor General in Council in exercise of powers conferred by the Foreign Jurisdiction and Extradition Act, 1870.<sup>8</sup>

**Second clause.**—This clause provides that a British subject committing an offence in the territories of any Native Prince or Chief may be dealt with in respect of such offence as if it has been committed in British India.

<sup>1</sup> *Superintendent and Remembrancer of Legal Affairs, Bengal v. Ladar-chandra Das*, (1931) 59 Cal. 1065.

<sup>2</sup> *Fakir*, (1884) P. R. No. 1 of 1885.

<sup>3</sup> *Narayan Mahale*, (1935) 37 Bom. L. R. 885, 59 Bom. 745.

<sup>4</sup> General Clauses Act (X of 1897),

s. 3(7).

<sup>5</sup> *Abdul Latif*, (1885) 10 Bom. 186.

<sup>6</sup> *Chimantlal*, (1912) 14 Bom. L. R. 876, 37 Bom. 152.

<sup>7</sup> *Hayes*, (1885) 12 Mad. 89.

<sup>8</sup> *Ibid.*



4. 'Any British subject.'—This expression is used in contradistinction to the expression "Native Indian subject" in cl. (1).

5. 'Territories.'—The word "territories" is used in reference only to territories of any Indian Prince or Chief in India. The word does not include the high seas since they are not part of the territories of any Indian State. An offence committed by a native Indian subject on the high seas at a distance of five or six miles from the coast can be tried by a Magistrate without the sanction of the Provincial Government. In this case the accused, who pulled up fishing stakes which the complainant had planted in the sea at a distance of five or six miles beyond the low water-mark, were convicted by a Magistrate for offences punishable under ss. 426 and 123 of the Penal Code. It was held that the Magistrate had jurisdiction to try the case without the sanction of the Provincial Government.<sup>1</sup>

Third clause.—This clause provides that when a servant of the King-Emperor, whether a British subject or not, commits an offence in the territories of any Indian Prince or Chief he may be dealt with in respect of such offence as if it had been committed in British India. Compare s. 4 of the Indian Penal Code and ill. (c). A foreigner committing an offence in the territories of any Indian Prince or Chief is not liable to be dealt with in respect of such offence in British India if he is not a servant of the King-Emperor.<sup>2</sup>

6. 'May be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found.'—The word "found" must be taken to mean not where a person is discovered, but where he is actually present.<sup>3</sup> Where a man is in the country and is charged before a Magistrate with an offence under the Penal Code, it will not avail him to say that he was brought there illegally from a foreign country. The principle upon which English cases are based underlies also this section.<sup>4</sup>

Cases.—A native Indian subject of Her Majesty committed an offence (viz., theft in a dwelling-house) in the territory of an Indian State in alliance with Her Majesty, and was discovered in the territory of another Indian State in alliance with His Majesty, and from there brought down, or came of his own accord, to Ahmedabad. A certificate was granted by the Political Agent that the offence ought, in his opinion, to be inquired into in British India. At Ahmedabad a preliminary inquiry was held by a Magistrate, who committed the accused for trial by the Court of Session. It was held that the Sessions Court at Ahmedabad was competent to try the offence committed in foreign territory as if it had been committed in the Ahmedabad District under s. 9 of the Foreign Jurisdiction and Extradition Act, XXI of 1879.<sup>5</sup> The accused were charged under s. 407 of the Indian Penal Code with committing criminal breach of trust in respect of certain property entrusted to them as carriers. They were all Native Indian subjects of His Majesty. The offence was alleged to have been committed in Portuguese territory, and they were found in a place in British territory. It was held that the accused could be tried in the place where they were found.<sup>6</sup> A Native Indian subject of His Majesty, who was a soldier in the Indian Army, committed a murder<sup>7</sup> in Cyprus while on service in such army. He was accused of such offence at Agra. It was held that the criminal Court at Agra had jurisdiction to try him.<sup>8</sup>

<sup>1</sup> *Manuel Philip*, (1917) 41 Bom. 667, 19 Bom. L. R. 527; *Po Thang*, (1910) 5 L. B. R. 221.

<sup>2</sup> See *Ibrahim*, (1898) P. R. No. 7 of 1894.

<sup>3</sup> *Maganlal*, (1882) 6 Bom. 622.

<sup>4</sup> *Vinayak Damodar Savarkar*, (1910)

35 Bom. 225, 13 Bom. L. R. 296; *Lopez and Sattler*, (1858) 27 L. J. M. C. 48.

<sup>5</sup> *Maganlal*, Sup.

<sup>6</sup> *Daya Bhima*, (1888) 13 Bom. 147.

<sup>7</sup> *Sarmukh Singh*, (1879) 2 All. 218, F.B.

**Proviso.**—Where the offence is committed in an Indian State, the certificate of the Political Agent is necessary ; and if there is no Political Agent for that State, the sanction of the Provincial Government is required.

7. 'Notwithstanding anything in any of the preceding sections of this Chapter.'—These words are inserted to make it clear that this section controls the preceding sections of this Chapter and it is not subject to the provisions of ss. 179-184.<sup>1</sup>

8. 'Certifies that, in his opinion, the charge ought to be inquired into in British India.'—The certificate of a Political Agent is a preliminary requisite as well to an inquiry before the Magistrate as to the trial before him.

The absence of the certificate of the Political Agent is an absolute bar to the trial of a case.<sup>2</sup> But the certificate can be obtained after the complaint has been filed and the inquiry has begun.<sup>3</sup> The proceedings of a Magistrate committing an accused to the Sessions Court, without such certificate are void and illegal.<sup>4</sup> Where an objection as to the want of a certificate was taken towards the close of the trial and more than two months after the Provincial Government had signed the requisite sanction it was held that the absence of the certificate during the earlier stages of the trial was not a fatal defect, but a mere irregularity curable under s. 537 of the Code.<sup>5</sup>

A certificate is necessary even though the trying Magistrate is the Political Agent. A District Magistrate instituted criminal proceedings in British India against a native Indian subject of the Queen, in respect of offences under ss. 419, 467 and 114 of the Indian Penal Code, said to have been committed by him in French territory, without a certificate under this section. The accused was committed to the Sessions Court. It was held, although the District Magistrate was the Political Agent who might have certified under this section, that the proceedings were void for want of the certificate, and the commitment should be quashed.<sup>6</sup>

'Charge.'—The word 'charge' means accusation, and it is not limited to a formal charge as in a warrant case.<sup>7</sup>

**Certificate granted after inquiry but before commitment.**—Where an inquiry into an offence was commenced without a certificate having been obtained, it was held that the proceedings were void, and that the subsequent commitment to the Court of Session must be quashed, notwithstanding that the necessary certificate was in fact granted some days before the commitment was made, though at the time of the commitment being made it had not come into the hands of the committing Magistrate.<sup>8</sup>

**Certificate received after commencement of inquiry but before commitment.**—In an inquiry before the committing Magistrate into an offence committed outside British India, the certificate from the Political Agent was not received until after some witnesses on behalf of the prosecution were examined but the certificate was received before the commitment was made. It was held that assuming that it would be more regular for the committing Magistrate to have recalled

<sup>1</sup> *Assistant Sessions Judge, North Arcot v. Ramaswami Asari*, (1914) 38 Mad. 779, overruled.

<sup>2</sup> *Ram Sundar*, (1896) 19 All. 109; *Kali Charan*, (1902) 24 All. 250; *Baldwa*, (1906) 28 All. 372; *Narain*, (1919) 41 All. 452; *Baku*, (1899) 24 Bom. 287, 1 Bom. L. R. 678; *Sirdar v. Jethabhai*, (1906) 8 Bom. L. R. 513; *Kathaperumal*, (1889) 13 Mad. 423; *Mohammad Zaman*, (1945) 20 Luck. 370.

<sup>3</sup> *Sakharam Pandu*, (1910) 12 Bom. L. R. 667.

<sup>4</sup> *Buta Singh*, (1926) 7 Lah. 396; *Ram Charan*, (1924) 5 Lah. 416.

<sup>5</sup> *Muhammad Qasim Khan*, (1934) 16 Lah. 73.

<sup>6</sup> *Kathaperumal*, Sup.

<sup>7</sup> *Harnarayan v. Govindram*, [1942] Nag. 193.

<sup>8</sup> *Kali Charan*, Sup.

the witnesses whom he had examined before the certificate was issued, nevertheless it had not been shown that the accused had in any way been injured or prejudiced.<sup>1</sup>

9. 'Where there is no Political Agent, the sanction of the Provincial Government shall be required.'—Where there is no Political Agent, the sanction of the Provincial Government is necessary.

Proviso 2.—This Proviso brings into operation s. 408, *infra*, to proceedings against the same person for the same offence which might have been taken under the Indian Extradition Act.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Provincial Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission<sup>1</sup> for taking evidence as to the matters to which such depositions or exhibits relate.

COMMENT.—1. 'Commission.'—Chapter XI. of this Code provides for the issue of commissions for the examination of witnesses. See also s. 33, Evidence Act.

*B.—Conditions requisite for Initiation of Proceedings.*

190. (1) Except as hereinafter provided,<sup>1</sup> any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered<sup>2</sup> in this behalf, may take cognizance of any offence<sup>3</sup>—

(a) upon receiving a complaint of facts which constitute such offence;<sup>4</sup>

(b) upon a report in writing of such facts made by any police-officer;

(c) upon information received from any person other than a police-officer,<sup>5</sup> or upon his own knowledge or suspicion,<sup>6</sup> that such offence has been committed.

(2) The Provincial Government, or the District Magistrate subject to the general or special orders of the Provincial Government, may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial.

(3) The Provincial Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial.

COMMENT.—This section describes the conditions requisite for the initiation of proceedings.

Sub-section (1).—1. 'Except as hereinafter provided.'—See ss. 195-99, 480, 485. Sections 182 and 188 lay down that certain offences shall not be taken cognizance of, until the conditions mentioned in these sections are fulfilled.

<sup>1</sup> *Mahamadbuksh*, (1906) 8 Bom. 12 Bom. L. R. 667; *Rambharathi*, L. R. 507; *Sakharam Pandu*, (1910) (1923) 47 Bom. 907, 25 Bom. L. R. 772.

2. 'Specially empowered.'—If a Magistrate not empowered by law takes cognizance of an offence under sub-section (1), cl. (a) or (b), erroneously but in good faith, his proceedings shall not be set aside merely on the ground of his not being so empowered.<sup>1</sup> But if he takes cognizance of an offence under cl. (c), without a complaint or police report, his proceedings shall be void.<sup>2</sup> A third class Magistrate can take cognizance of an offence under cls. (a) and (b) only.<sup>3</sup>

3. 'May take cognizance of any offence.'—The use of the term "may take cognizance of any offence" does not make it optional with a Magistrate to hear a complaint, but refers rather to the action of the Magistrate in taking cognizance of an offence in either of the specified courses in which the facts constituting the offence may be brought to his notice. He is bound to examine the complainant and then can either issue summons to the accused, or order any inquiry under s. 202, or dismiss the complaint under s. 203.<sup>4</sup>

The term "taking cognizance" means any judicial action permitted by the Code taken with a view to eventual prosecution preliminary to the commencement of the inquiry or trial under ss. 207, 241, 251. The phrase "taking cognizance" does not involve any formal action or indeed action of any kind, but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence.<sup>5</sup>

An order of discharge is not a bar to fresh proceedings.—An order of discharge does not operate as a bar to fresh proceedings being taken before a competent Magistrate upon complaint or upon a police report, or under cl. (c) of this section.<sup>6</sup>

Clause (a).—4. 'Upon receiving a complaint of facts which constitute such offence.'—As to the definition of "complaint," see s. 4 (h), *supra*. The "complaint" may be by word of mouth or in writing; no prescribed form of words is necessary; all that is required is that facts, which *prima facie* constitute an offence, should be brought to the notice of the Magistrate by the complainant.<sup>7</sup> As a general rule, any person, having knowledge of the commission of an offence, may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. The exceptions to this rule, of which ss. 195 and 198 are examples, are exceptions created by statute. There is nothing in the Code showing an intention to confine the prosecution to the person directly injured.<sup>8</sup>

There are several special and local laws declaring the persons by whom prosecutions under those laws must be launched. Where a Magistrate takes cognizance of an offence on complaint he must proceed in accordance with the provisions of ss. 202-205.

A Magistrate is bound to take cognizance upon a proper complaint. When a complaint is made, the complainant is entitled to have it inquired into and the Magistrate cannot avoid the responsibility of making the inquiry himself merely by accepting the conclusion of the police on the subject.<sup>9</sup> It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he can take cognizance, to refer the complainant to a police-officer. He is bound, when the

<sup>1</sup> See s. 529 (c), *infra*.

<sup>2</sup> Section 530, *infra*.

<sup>3</sup> *Sada*, (1901) 26 Bom. 150, 3 Bom. L. R. 586, F.B.

<sup>4</sup> *Umer Ali v. Safer Ali*, (1886) 13 Cal. 334.

<sup>5</sup> *Sourindry Mohan Chuckerbutty*, (1910) 37 Cal. 412.

<sup>6</sup> *Sheikh Idoo*, (1912) 40 Cal. 71;

*Mir Ahwad Hossein v. Mahomed Askair*, (1902) 29 Cal. 728, F.B.

<sup>7</sup> *Sham Lall*, (1887) 14 Cal. 707, F.B.

<sup>8</sup> *Ganesh Narayan Sathe*, (1889) 13 Bom. 600; *Keshavlal Jekrishna*, (1896) 21 Bom. 536.

<sup>9</sup> *Sham Lall*, *sup.*

circumstances giving him jurisdiction exist, to receive the complaint, and to deal with it according to law. A different course would foster abuses, and defeat the purpose of the law, which is to give to persons who have been injured an access to justice independent of the police.<sup>1</sup> A Magistrate can in a proper case treat the police report of a non-cognizable offence as a complaint and take cognizance under this clause.<sup>2</sup>

Clause (b).—This clause applies to any report by a police-officer whether of a cognizable or non-cognizable offence.<sup>3</sup> A Magistrate is under this clause entitled to take cognizance of a non-cognizable offence upon a report made in writing by a police-officer without examining the officer on oath.<sup>4</sup> "Police report" means a report within the meaning of s. 170. The police report must state facts which constitute the offence. This is a requisite of fundamental importance.<sup>5</sup>

Clause (c).—5. 'Upon information received from any person other than a police-officer.'—The expression "information received from any person other than a police-officer" clearly means only such information as does not constitute a complaint or a police report.

This clause applies only to cases where the private individual who is injured or aggrieved or someone on his part does not come forward to make a formal complaint. It is a provision of law for enabling a public official to take care that justice may be vindicated notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute.<sup>6</sup>

Information under this clause is distinct from a complaint under clause (a). The essential difference between a complaint and information is that a Magistrate acts on a complaint because the complainant has asked him to act but in the case of information a Magistrate acts of his own accord and initiative. It is for this reason that in the latter case s. 191 requires that he must inform the accused that the accused may be tried by another Court.<sup>7</sup>

A Magistrate can take cognizance of an offence upon information received by him in another capacity.<sup>8</sup> A District Magistrate, who receives information as President of a District Board as to the commission of an offence by a servant of the Board, can take cognizance of the offence.<sup>9</sup>

6. 'Upon his own knowledge or suspicion.'—A Magistrate can take cognizance of an offence, without any complaint, only when it has come to his knowledge that such offence has been committed.<sup>10</sup> A gratuitous suspicion or a belief founded on private information contained in an anonymous petition is not knowledge.<sup>11</sup> Belief founded on private or anonymous information is not "knowledge."<sup>12</sup>

191. When a Magistrate takes cognizance of an offence under subsection (f), clause (c), of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by

<sup>1</sup> *Jankidas Guru Silaram*, (1887) 12 Bom. 161.

<sup>2</sup> *Shivasmami*, (1927) 29 Bom. L. R. 742, 51 Bom. 498.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Public Prosecutor v. Ratnavelu Chetty*, (1926) 49 Mad. 525, F.B.; *Gundo Chikho*, (1921) 23 Bom. L. R. 842.

<sup>5</sup> *Nagendra Nath Chakravarti*, (1928) 51 Cal. 402.

<sup>6</sup> *Surrendra Nath Roy*, (1870) 13

W. R. (Cr.) 27.

<sup>7</sup> *Sheo Pratap Singh*, (1980) 53 All. 208.

<sup>8</sup> *Sundarasan*, (1919) 43 Mad. 709; *Lakhi Narayan*, (1910) 87 Cal. 221.

<sup>9</sup> *Sundarasan*, *ibid.*

<sup>10</sup> *Venkata Ramaniar*, [1988] Mad. 814.

<sup>11</sup> *Mohesh Chunder Binerjee*, (1870) 18 W. R. (Cr.) 1.

<sup>12</sup> *Ibid.*

another Court, and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session or transferred to another Magistrate.<sup>1</sup>

**COMMENT.**—This section provides that if a Magistrate takes cognizance of an offence under sub-section (1), cl. (c), of s. 190, and if, before any evidence is taken, the accused objects to being tried by such Magistrate, he may either transfer the case to another Magistrate, or commit the case to the Court of Session. A Magistrate taking cognizance of an offence under that clause is not competent to try the case unless and until he has informed the accused, before taking any evidence, that he is entitled to have his case tried by another Court.<sup>1</sup>

1. 'If the accused, . . . objects to being tried by such Magistrate, the case shall . . . be committed to the Court of Session or transferred to another Magistrate.'—If the accused applies for a transfer the Magistrate must transfer the case.<sup>2</sup> On objection being raised to a trial by the Magistrate, he is not bound to transfer the case; he may elect to commit the case to the Court of Session.<sup>3</sup> In that case he is not disqualified from holding a preliminary inquiry before committing to the Court of Session.<sup>4</sup> All that the accused is entitled to is to have the case tried by another Court. The section gives the accused no right to select or determine for himself by what other Court the case is to be tried.<sup>5</sup>

192. (1) Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may transfer any case,<sup>1</sup> of which he has taken cognizance,<sup>2</sup> for inquiry or trial,<sup>3</sup> to any Magistrate subordinate to him.<sup>4</sup>

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial;<sup>5</sup> and such Magistrate may dispose of the case accordingly.<sup>6</sup>

**COMMENT.**—The provisions of this section are intended for distribution of work where there are more Magistrates than one at a place.

This section provides for transfer of cases to a subordinate Magistrate or to a specified Magistrate. Section 528 enables a superior Magistrate to withdraw any case from or recall any case which he has transferred to any subordinate Magistrate. Under this section no notice to the accused is necessary: s. 528 makes such a notice obligatory. It is not necessary to examine the complainant before transferring the case [*vide* s. 200 (a)].

**Sub-section (1).**—Under this sub-section certain superior Magistrates are empowered to transfer a case to subordinate Magistrates. Under sub-s. (2) any first class Magistrate may transfer a case to any other specified Magistrate in his district who is competent to try the accused or commit him for trial.

1. 'May transfer any case.'—There is a class of cases which a Magistrate must transfer to another Magistrate, see ss. 487 and 556, *infra*.

The transfer is not limited to a "criminal case" only. The phrases "case" and "criminal case" are not co-extensive and are not used indiscriminately or

<sup>1</sup> *Chedi*, (1905) 28 All. 212; *Baldeo Prasad*, (1933) 12 Pat. 758.

<sup>2</sup> *Hawthorne*, (1891) 13 All. 845; *Chedi*, *ibid.*

<sup>3</sup> *Felix*, (1898) 22 Mad. 148.

<sup>4</sup> *Abdul Razzak Khan*, (1898) 21 All. 109.

<sup>5</sup> *Shrinivas*, (1905) 7 Bom. L. R. 637.

interchangeably. The phrase "criminal case" is intended to be used in a limited sense and not to apply to every case cognizable by the criminal Court.<sup>1</sup> The class is not restricted to criminal cases only but is wide enough to include any case triable by any criminal Court, e.g. cases under Chapter VIII<sup>2</sup> or Chapter XII.<sup>3</sup>

Even if a Magistrate having no power to transfer a case, transfers the case erroneously and in good faith, the whole proceedings would not, by reason of s. 529(f), be void.<sup>4</sup>

2. 'Of which he has taken cognizance.'—Cognizance is not confined to offences only. Cognizance may be taken by a Magistrate of any matter in respect of which an enquiry or trial may be held under the provisions of the Code, for example, cases under ss. 107, 110 and 145.<sup>5</sup> A Magistrate can transfer only those cases of which he has taken cognizance under s. 190. When a District Magistrate has referred a case for trial to a Sub-divisional Magistrate, the latter has no power to transfer it to any other Magistrate subordinate to him.<sup>6</sup> A Magistrate cannot transfer a case which has been transferred to his Court.

3. 'For inquiry or trial.'—"Inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court (see s. 4, *supra*). The word "trial" is not defined in the Code.

4. 'To any Magistrate subordinate to him.'—The transfer of a case under this section must be from any one of the Magistrates mentioned in sub-s. (1) to a subordinate Magistrate. All Magistrates appointed under ss. 12, 13 and 14 of the Code and all Benches constituted under s. 15 shall be subordinate to the District Magistrate. Every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate (s. 17, *supra*).

So far as Presidency Magistrates are concerned, all of them are subordinate to the Chief Presidency Magistrate.

Effect of transfer.—Where a case has once been made over by a Magistrate to a Deputy Magistrate for trial, the Magistrate has no jurisdiction to do anything more in the matter so long as the transfer of the Deputy Magistrate is in existence.<sup>7</sup> Where a case is made over to a subordinate Magistrate, no other Magistrate is competent to deal with it, and applications for warrants against other persons concerned in that offence should be made to the Magistrate before whom the case is, and to no other Magistrate.<sup>8</sup>

Notice of transfer.—Notice of transfer should be served upon the parties so as to enable any or either of the parties to come forward and show cause why such transfer should not be made.<sup>9</sup>

Sub-section (2).—Under this sub-section a Magistrate of the first class, even duly empowered to transfer cases, can only transfer an inquiry or trial relating to an offence.<sup>10</sup>

<sup>1</sup> *Lalit Mohan Moitra v. Surja Kanta Acharyee*, (1901) 28 Cal. 709.

<sup>2</sup> *Chinlaman Singh*, (1907) 35 Cal. 243; *Munna*, (1901) 24 All. 151.

<sup>3</sup> *Satish Chandra v. Rajendra Narain*, (1895) 23 Cal. 898.

<sup>4</sup> *Surfya Kanta Roy Chowdhry*, (1904) 31 Cal. 350; *Sarat Chunder Roy v. Bepin Chandra Roy*, (1902) 29 Cal. 389.

<sup>5</sup> *Hafizur Rahaman v. Aminul Haque*, [1941] 1 Cal. 68.

<sup>6</sup> *Bashir Husain v. Ali Husain*,

(1913) 38 All. 166.

<sup>7</sup> *Belittas*, (1869) 12 W. R. (Cr.) 53.

<sup>8</sup> *Golapady Sheikh*, (1900) 27 Cal. 979; *Ajab Lal*, (1905) 32 Cal. 733; *Amrit Majhi*, (1919) 46 Cal. 854.

<sup>9</sup> *Teacotta Shekdas*, (1882) 8 Cal. 393.

<sup>10</sup> *Akbar Ali Khan v. Domi Lal*, (1900) 4 C. W. N. 821. But see *Satish Chandra v. Rajendra Narain*, *supra*; *Munna*, *supra*.

5. 'Who is competent under this Code to try the accused or commit him for trial.'—This sub-section does not authorize a District Magistrate to transfer for trial to a subordinate Magistrate cases which are not within the powers of that Magistrate to try.<sup>1</sup> If the Magistrate to whom a case is transferred lacks jurisdiction to try the case, the order of transfer is bad in law.<sup>2</sup>

6. 'Such Magistrate may dispose of the case accordingly.'—If any evidence is recorded by the Magistrate from whose Court the case is transferred it should be recorded again by the Magistrate to whom it is transferred. He must re-summon the witnesses.<sup>3</sup>

193. (1) Except as otherwise expressly provided by this Code<sup>1</sup> or Cognizance of by any other law for the time being in force, no Court offences by Courts of Session shall take cognizance of any offence as a of Session. Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Provincial Government by general or special order may direct them to try, or as the Sessions Judge of the division, by general or special order, may make over to them for trial.

COMMENT.—This section provides for the ordinary original jurisdiction of Courts of Session. No Court of Session can take cognizance of any offence as a Court of original jurisdiction in the absence of a commitment by a competent Magistrate. Trial of a person who is not committed to the Sessions Court is *ultra vires*.<sup>4</sup>

Section 28, *supra*, provides for the offences which the Sessions Court may try.

Object.—The object of restricting a Sessions Court from taking cognizance of any offence, except in certain cases, unless the accused person has been committed by a Magistrate, is to secure to the accused a preliminary inquiry, which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him and enable him to make his defence.<sup>5</sup> The law contemplates that in the serious cases of which a Court of Session may take cognizance, the accused should have some information of the case he has to answer.<sup>6</sup>

1. 'Except as otherwise expressly provided by this Code.'—Except in cases in which a Court of Session is expressly empowered to take cognizance of an offence as a Court of original jurisdiction, it has no power to do so unless a commitment has been made by a Magistrate duly empowered in that behalf.<sup>7</sup>

See ss. 478, 480 and 485, *infra*, as to the excepted cases.

Sub-section (2).—This sub-section gives the Sessions Judge the power of distribution of business subject to the general or special orders of the Provincial Government. It does not confer on the Sessions Judge the power to transfer appeals to the Assistant Sessions Judge. The word "cases" does not include "appeals."<sup>8</sup>

Cognizance of 194. (1) The High Court may take cogni- offences by High zance of any offence upon a commitment made to it Court. in manner hereinafter provided.

<sup>1</sup> *Khandu Genu*, (1896) Unrep. Cr. C. 838.

<sup>5</sup> *M. K. Rama Varma Raja*, (1881) 8 Mad. 351.

<sup>2</sup> *Mathura v. Kamta*, (1940) 15 Luck. 468.

<sup>6</sup> *Chinna Vedagiri Chetti*, (1881) 4 Mad. 227.

<sup>3</sup> *Bashir Khan*, (1892) 14 All. 346.

<sup>7</sup> *Maula Khan*, (1907) 27 A. W. N.

<sup>4</sup> *Rama Tewari*, (1892) 15 Mad. 352; *Jagat Chandra Mali*, (1894) 22 Cal. 50.

<sup>8</sup> *Abdul Razak*, (1915) 37 All. 286.



Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the Indian High Courts Act, 1861, or the Government of India Act, 1915, or the Government of India Act, 1935, or any other provision of this Code.

(2) (a) Notwithstanding anything in this Code contained, the Advocate General may, with the previous sanction of the Provincial Government, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney General may exhibit informations on behalf of the Crown in the High Court of Justice in England.

(b) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Majesty's Attorney General so far as the circumstances of the case and the practice and procedure of the said High Court will admit.

(c) All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information shall form part of the revenues of the Province.

(d) The High Court may make rules for carrying into effect the provisions of this section.

**COMMENT.**—This section provides for the trial of criminal cases by the High Court.

An ex-officio information under this section should contain a statement of the charge as certain and detailed as an indictment.<sup>1</sup>

**Commitment by Coroner.**—An inquisition drawn up by a Coroner under the Coroners Act against an accused person, although it may have the effect of a valid commitment upon which the High Court in the exercise of its original criminal jurisdiction may act, has not that effect until it has been accepted by the High Court, and the officers of the Crown have drawn up a charge in accordance with it. Such a commitment by the Coroner does not of itself oust the jurisdiction of a Presidency Magistrate to inquire into, commit or try the case; and until the High Court has accepted such commitment, any order of acquittal or discharge made by such Magistrate in the case will be operative subject to the discretion of the High Court whether it should take action upon the inquisition of the Coroner as an effective commitment. After a Coroner has drawn up an inquisition against a person and committed him to prison, the High Court alone is empowered to release him on bail.<sup>2</sup>

195. (1) No Court shall take cognizance<sup>1</sup>—

(a) of any offence punishable under sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant<sup>2</sup> concerned, or of some other public servant to whom he is subordinate;<sup>3</sup>

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court,<sup>4</sup>

<sup>1</sup> *Dwarkanath Varma*, (1933) 35 Bom. L. R. 507, P. C.

<sup>2</sup> *Jogeshwar Dass*, (1903) 31 Cal. 1.

except on the complaint in writing of such Court,<sup>1</sup> or of some other Court to which such Court is subordinate;<sup>2</sup> or

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence<sup>3</sup> in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(2) In clauses (b) and (c) of sub-section (1), the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie<sup>4</sup> from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate :

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate ; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences, and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

**COMMENT.**—Sections 195 to 199 are exceptions to the general rule that any person, having knowledge of the commission of an offence, may set the law in motion by a complaint, even though he is not personally interested or affected by the offence.<sup>1</sup> This section must be read along with s. 476, *infra*.

The operation of this section is only confined to certain offences under the Indian Penal Code.

**Object.**—This section was amended by Act XVIII of 1923, s. 47, to prevent prosecutions by private persons. The object of the amendment was to stop private persons from obtaining sanction as a means of wreaking vengeance and to give the Court full discretion in deciding whether any prosecution is necessary or not. Sanction to prosecute cannot now be granted to a private person.<sup>2</sup> Private prosecu-

<sup>1</sup> *Ganesh Narayan Sathe*, (1889) 13 Bom. 600.

<sup>2</sup> *Gafur Daud Sahab*, (1924) 26 Bom. L. R. 1285.

tion, in every case, is more likely to be inspired by the avenging spirit and, indeed, in a system of criminal administration, where the party wronged, rather than a public official, is given the conduct of prosecution, the vice of over-eagerness to obtain convictions predominates. The evil may not be avoided altogether. But at least in the case of offences where the act to a great extent affects the dignity and prestige of the Courts concerned, it is deemed inexpedient to allow such acts to be the sports of personal passions.<sup>1</sup>

Under the old section private persons could launch a prosecution with the sanction of the public servant concerned in cl. (a) or of the Court in cls. (b) and (c). Under the present section only the public servant concerned or his superior can move under cl. (a) and the Court or the Court to which it is subordinate can move under cls. (b) and (c).

No private person can now prosecute anyone for committing offences specified in cls. (a), (b) and (c) before a public servant or a Court.

**Scope.**—The scope of this section as regards the making of complaints is not restricted to the Courts detailed in s. 476, namely civil, revenue and criminal Courts. There may be Courts outside the three classes which may properly come under this section.<sup>2</sup>

The provisions of this section do not apply to defamation and a person who is defamed by a witness when in the witness-box is at liberty to file a complaint against his defamer. It is not necessary that the Court should itself complain or that the sanction of the Court should be obtained.<sup>3</sup>

**Sub-section (1).**—1. ‘No Court shall take cognizance.’—This section merely prohibits the entertainment of a complaint in a Court governed by the Criminal Procedure Code without a complaint in writing of the public servant as required by cl. (a) or the Court or Provincial Government as required by cls. (b) and (c).

**Clause (a).**—The offences referred to in this clause relate to contempts of the lawful authority of public servants (Chapter X, Indian Penal Code). This clause requires a complaint in writing of the public servant concerned, or of some public servant to whom he is subordinate, before a Court can take cognizance of these offences.

2. ‘Except on the complaint in writing of the public servant, etc.’—“Public servant” is defined in s. 21, Indian Penal Code. The responsibility for prosecution under the present section rests upon the public servant or Court entirely, such a prosecution being a very different thing from a prosecution instituted on the complaint of a private party and merely sanctioned by the Court under the old section.

The complaint is to be made *in writing* in order to remove the inconvenience which might be felt if it was made incumbent on the public servant to attend the Court and to appear before the Magistrate in order to lodge the complaint.

3. ‘Or of some public servant to whom he is subordinate.’—The word “subordinate” means inferior and bound to obey lawful orders of his official superior. Although police-officers in a district are generally subordinate to the District Magistrate, the subordination contemplated by this section is not such

<sup>1</sup> *Kedar Nath Sen v. Amulya Ratan Sanyal*, [1942] 1 Cal. 278.

<sup>2</sup> *Hari Charan Kundu v. Kanshi Charan De*, [1940] 2 Cal. 14.

<sup>3</sup> *Nallappa Goundan v. Chinmammal*, [1942] Mad. 158; *Satish Chandra*

*Chakravarti v. Ram Doyal De*, (1920) 48 Cal. 388, S. B.; *Muhammad Isa v. Nazim Husain*, [1940] All. 814; *Mst. Binta*, [1937] Nag. 323; *Chotalal v. Phulchand*, [1937] Nag. 425.

subordination. That subordination contemplates some superior officer of police.<sup>1</sup> A Subordinate Judge can grant a sanction to prosecute in respect of an offence committed before a Commissioner appointed by him.<sup>2</sup>

Clause (b).—4. 'In, or in relation to, any proceeding in any Court.'—The offence must have been committed "in, or in relation to, any proceeding in any Court."<sup>3</sup> These words are very general and are wide enough to cover a proceeding in contemplation before a criminal Court, though it may not have begun at the date when the offence was committed.<sup>4</sup> They should not be construed narrowly. An offence which is committed in or in relation to any proceeding in the trial Court is also committed 'in relation to' the appeal in the appellate Court. For example, the offence of perjury, although it was committed in the trial Court, must be deemed to have been also committed in relation to the appeal in the appellate Court. Because the person committing it does it with the intention of influencing the proceedings in the trial Court as well as in subsequent proceedings if there was an appeal.<sup>5</sup>

The Court before whom the offences specified in this clause are committed or the Court to which such Court is subordinate must file a complaint in writing if it is of opinion that proceedings should be taken in the interest of justice.<sup>6</sup> The power of a Court to complain in respect of offences mentioned in this clause is not restricted, as under clause (c), to the parties before it.<sup>7</sup>

As to the definition of "Court" see s. 6, *supra*. The word "Court"<sup>8</sup> is used in a very wide sense. It has a wider meaning than the words "Court of Justice" in s. 20 of the Penal Code. It means the Court whose duty it is to consider evidence and to decide whether it is true or false.<sup>9</sup> See sub-section (2) as to the extended meaning given to the word "Court." It will include a tribunal empowered to deal with a particular matter and authorized to receive evidence on that matter in order to come to a determination, e.g. tribunal formed under the Calcutta Improvement Act.<sup>9</sup> It does not include a Court in an Indian State.<sup>10</sup>

5. 'Such Court.'—The words "such Court" include the successor of the Judge before whom the offence is alleged to have been committed.<sup>11</sup> When a suit is tried by a Judge of the High Court, the term 'Court' must be taken to mean the High Court.<sup>12</sup> The complaint required by this section is the complaint of the Court in which the documents were given in evidence and not of the trial Judge only, and there is nothing to prevent any Judge of the High Court from dealing with the matter.<sup>13</sup>

The Registrar of the Presidency Small Cause Court is not a "Court" unless he has been in some way or other specifically empowered to be a Judge.<sup>14</sup>

- <sup>1</sup> *Ramasonry Lall*, (1900) 27 Cal. 452.
- <sup>2</sup> *Nana Khanderao*, (1927) 29 Bom. L. R. 1476.
- <sup>3</sup> *Govind Pandurang*, (1920) 45 Bom. 668, 22 Bom. L. R. 1239.
- <sup>4</sup> *Vasudeo*, (1922) 24 Bom. L. R. 1153.
- <sup>5</sup> *Sheo Narain Jafa*, (1931) 53 All. 799; *Hasam*, (1933) 86 Bom. L. R. 221.
- <sup>6</sup> *Maneklal*, (1926) 28 Bom. L. R. 1296.
- <sup>7</sup> *Syed Khan*, (1925) 8 Ran. 308, F.B.
- <sup>8</sup> *Saadut Ali Khosla*, (1907) 11 C. W. N. 909; *Bibhootibhooshan Adhikari* v. *Khemchand Chururia*, (1934) 61 Cal. 792.
- <sup>9</sup> *Nanda Lal v. Kheta Mohan*, (1918) 45 Cal. 585.
- <sup>10</sup> *Mulljibhai Hirabhai*, (1925) 27 Bom. L. R. 1063, 49 Bom. 800.
- <sup>11</sup> *Bahadur v. Eradatullah*, (1910) 37 Cal. 642, F.B.; *Nawal Singh*, (1912) 34 All. 393.
- <sup>12</sup> *Rai Kasturbai v. Vanmalidas*, (1925) 49 Bom. 710, 27 Bom. L. R. 616.
- <sup>13</sup> *Varadarajulu*, [1937] Mad. 612.
- <sup>14</sup> *Varadaramanjulu v. Kawnanoor*, [1943] Mad. 600.

6. 'Some other Court to which such Court is subordinate.'—The Legislature has not confined the right to complain to the Court before which the offence is committed, but has conferred it also on the Court to which it is subordinate. The word "subordinate" is explained in sub-section (3). Thus, the Court of an Assistant Collector is not subordinate to that of the Magistrate of the district,<sup>1</sup> but he is subordinate to the District Judge.<sup>2</sup>

Clause (c).—7. 'Offence... committed by a party to any proceeding in any Court in respect of a document produced or given in evidence.'—The Allahabad High Court has held in a full bench case that this clause applies only to cases where an offence, mentioned therein, is committed by a party, as such, to a proceeding in any Court in respect of a document which has been produced or given in evidence in such proceeding. The words "committed by a party to any proceeding" should be interpreted to mean "committed by a person who is already a party to a proceeding."<sup>3</sup> Where, therefore, certain directors or officers of a company had been forging the books and accounts of the company, and such persons were subsequently parties to liquidation proceedings in Court, no complaint by the Court was necessary under this clause for the prosecution of those persons for forgery, inasmuch as the documents were not forged by a party as such to the liquidation proceedings and the offences were not committed in or in relation to those proceedings.<sup>4</sup> The High Courts of Calcutta,<sup>5</sup> Madras,<sup>6</sup> Lahore,<sup>7</sup> and Rangoon<sup>8</sup> have held that this clause also applies to cases where the offence is committed before the offender becomes a party to a proceeding in Court. The Bombay High Court has followed this view. It has held that under this clause the Court has to see whether the offence in respect of which it is asked to take cognizance is alleged to have been committed by a party to any proceeding in any Court and in respect of a document produced or given in evidence in such proceeding. The bar contained in this clause applies if at the time when the Court is asked to take cognizance of a complaint the accused is a party to proceedings in a Court in which the document has been produced or used in evidence. It is immaterial that the forgery has been committed by such party before the proceedings were taken.<sup>9</sup>

The word "party" does not include a witness in such proceeding. It therefore follows that a witness may be prosecuted by a private person and it is not necessary that the Court should be the complainant.<sup>10</sup> Similarly it does not include the guardian or next friend of a minor who is a party to a suit.<sup>11</sup> According to the Lahore High Court there is nothing to prevent the trial of an abettor of an offence committed by a party to a proceeding in Court without a complaint by the Court concerned.<sup>12</sup> The Bombay High Court has held that the abettor could not be tried except on a complaint by the Court concerned.<sup>13</sup>

<sup>1</sup> *Narotam Das*, (1888) 6 All. 98.

<sup>2</sup> *Shankar Dial v. A. M. Venables*, (1896) 19 All. 121.

<sup>3</sup> *Kushal Pal Singh*, (1931) 53 All. 804, F.B.; *Bishan Sahai Vidyarthi*, [1937] All. 779.

<sup>4</sup> *Bishan Sahai Vidyarthi*, ibid.

<sup>5</sup> *Nalini Kanta Laha v. Anukul Chandra Laha*, (1917) 44 Cal. 1002.

<sup>6</sup> See *Parameswaran Nambudri*, (1915) 39 Mad. 677.

<sup>7</sup> *Khairati Ram v. Malawa Ram*, (1924) 5 Lah. 550.

<sup>8</sup> *Maung Po Thin v. Ma Ma*, (1932) 33 Cr. L. J. 919, [1932] A. I. R.

Ran. 130.

<sup>9</sup> *Rachappa Yellappa*, (1936) 38 Bom. L. R. 440, 60 Bom. 756, *Noor Mahomed v. Kaikhosru*, (1902) 4 Bom. L. R. 268, distinguished and doubted.

<sup>10</sup> See *Deoji valad Bhawan*, (1898) 18 Bom. 581; *Debi Lal Dhajadari Gasha*, (1911) 15 C. W. N. 565.

<sup>11</sup> *Mallappa Tejappa*, (1936) 38 Bom. L. R. 964.

<sup>12</sup> *Fakir Singh*, (1928) 10 Lah. 442; *Ghansham Singh*, (1910) 32 All. 74.

<sup>13</sup> *Narayan Dhanddev*, (1910) 12 Bom. L. R. 888.

As to the definition of "document" see the Indian Evidence Act, s. 8. The word "produced" will cover every document that has been filed or put into Court. The "production" of a document in Court is not the same thing as "giving it in evidence." A document produced in Court means one which is produced for the purpose of being tendered in evidence or for some other purpose.<sup>1</sup> A document is "given in evidence" when it is handed over by the person tendering it to the Court, even though on inspection the Court rejects it as evidence for insufficiency of stamp or want of registration,<sup>2</sup> or returns it to the party producing it and does not take it on the file.<sup>3</sup> The Patna High Court has held that where the accused is not a party to the production of the document, sanction of the Court is not necessary to prosecute him.<sup>4</sup> According to the Bombay High Court this clause is wide enough to cover a document produced or given in evidence in the course of a proceeding, whether produced or given in evidence by the party who is alleged to have committed the offence or by anyone else.<sup>5</sup>

The documents in connection with which the offences are alleged to have been committed must have been actually produced in Court in the suit in which the offences are said to have been committed. If the document is not produced in Court but is disclosed in an affidavit filed therein and is filed in the office of the Translator of the High Court for translation, no complaint by the Court is necessary.<sup>6</sup>

'Such Court.'—Where the documents complained of are used in the Court of an Additional District Judge, the District Judge has no jurisdiction to pass an order directing a complaint to be made.<sup>7</sup>

Sub-section (2).—The word "includes" is substituted for the word "means" in this clause.

The word "Court" has been given a very wide meaning.

Cases.—An Income-tax Collector is a revenue Court within the meaning of that term as used in cls. (b) and (c).<sup>8</sup> A District Judge hearing an election petition under the provisions of s. 22 of the Bombay District Municipal Act (Bom. III of 1901), is a "Court."<sup>9</sup> The Official Assignee does not become a civil Court merely because he has a wide discretion in deciding claims of persons alleging themselves to be creditors of the insolvent, or because persons aggrieved by decisions of his can appeal to the Court from those decisions.<sup>10</sup>

Sub-section (3).—This sub-section applies only where a complaint has been made under sub-section (1) (b) or (c) by a Court and not when a complaint has been made under sub-section (1) (a) by a public servant.<sup>11</sup>

8. 'Appeals ordinarily lie.'—The Court which hears appeals only on transfer by a superior Court is not such a Court to which appeals ordinarily lie.<sup>12</sup> A decree in a special instance may be appealable to the High Court, still, as appeals from the Court of the First Class Subordinate Judge ordinarily lie to the District Court, the

<sup>1</sup> *Gopal Sidheshwar*, (1907) 9 Bom. L. R. 785.

<sup>2</sup> *Nagindas*, (1886) Unrep. Cr. C. 242, Cr. R. No. 10 of 1886.

<sup>3</sup> *Gulabchand Rupji*, (1925) 27 Dom. L. R. 1039, 49 Bom. 799.

<sup>4</sup> *Janardhan Thakur v. Baldeo Prasad Singh*, (1920) 5 P.L. J. 185.

<sup>5</sup> *Bhau Vyankatesh*, (1925) 27 Bom. L. R. 607, 49 Bom. 608.

<sup>6</sup> *Munisamy Mudakkir v. Rajaratnam Pillai*, (1922) 45 Mad. 928, F.B.

<sup>7</sup> *Hari Das Shaha v. Dulai Chandra Sadhukhan*, [1942] 2 Cal. 456.

<sup>8</sup> *Punamchand Maneklal*, (1914) 88 Bom. 642, 16 Bom. L. R. 446, F.B.

<sup>9</sup> *Nanchand Shivchand*, (1912) 37 Bom. 365, 15 Bom. L. R. 45.

<sup>10</sup> *Beardsell & Co. v. Abdul Gunni Sahib*, (1912) 37 Mad. 107.

<sup>11</sup> *Maini Missir*, (1926) 6 Pat. 39.

<sup>12</sup> *Subbamma*, (1903) 27 Mad. 124; *Ram Charan v. Taripulla*, (1912) 39 Cal. 774.

former is subordinate to the latter Court.<sup>1</sup>

A Magistrate who has been directed and empowered to hear appeals under the provisions of s. 407 (2) of the Code is not the "Court to which appeals ordinarily lie."<sup>2</sup> The Court of Additional District Magistrate is not the Court to which appeals against the orders of second or third class Magistrates ordinarily lie. Where a complaint was made by such a Magistrate after holding a preliminary inquiry, it was held that the complaint was lodged without jurisdiction.<sup>3</sup> Where a public servant is acting as a Court he is subordinate to the Court to which appeals lie from his Court. A first class Magistrate is subordinate to the Sessions Judge ;<sup>4</sup> so also a District Magistrate is subordinate to the Sessions Judge.<sup>5</sup>

The Court of a single Judge of the High Court is subordinate to the Division Bench of the High Court hearing appeals from such Court in certain cases.<sup>6</sup>

Proviso, clause (a).—Where appeals from a Court lie to two different appellate Courts, one of which is of inferior jurisdiction, then the appellate Court of inferior jurisdiction is the Court to which the original Court is subordinate. Appeals from the Court of a First Class Subordinate Judge lie to the High Court when the value of the subject-matter of the suit is Rs. 5,000 or more ; when the value is less, the appeal lies to the District Court. But for the purposes of this section the District Court is the Court to which the First Class Subordinate Judge's Court is subordinate.<sup>7</sup>

Proviso, clause (b).—Appeals from a Court may in certain cases go to a civil Court and in other cases to a revenue Court. When there is dual jurisdiction, the question of subordination must be decided according to the nature of the case in connection with which the offence is alleged to have been committed.

Sub-section (4).—The offences referred to in this sub-section include criminal conspiracies to commit them and abetment of such offences, and attempts to commit them.

Sub-section (5).—This sub-section applies only in a case where a complaint is made by a public servant. It does not apply where the complaint is made by a Court.

**196.\*** No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Indian Penal Code (except section 127), or punishable under section 108A, or section 153A, or section 294A, or section

<sup>1</sup> *Anant Ramchandra*, (1886) 11 Bom. 438 ; *Maduray Pillay v. Elderton*, (1895) 22 Cal. 487.

<sup>2</sup> *Eroma Variar*, (1908) 26 Mad. 656.

<sup>3</sup> *Nazar Mohammad v. Harnam Singh*, [1938] Lah. 188.

<sup>4</sup> *Budiuddin*, (1922) 47 Bom. 102, 24 Bom. L. R. 810.

<sup>5</sup> *Panchalu Reddi v. Chinna Venkatu*

*Reddy*, (1918) 42 Mad. 96 ; *Shankar Dial v. A. M. Venables*, (1896) 19 All. 121.

<sup>6</sup> *Duraiwami v. Sivanapandia*, [1944] Mad. 643.

<sup>7</sup> *Lakshman Sakharan*, (1877) 2 Bom. 481 ; *Anant Ramchandra*, (1886) 11 Bom. 438.

\* Bombay amendment.—In the Province of Bombay this section is to be read as if the words "and section 171F so far as it relates to the offence of personation" are inserted after the word and figures "section 127."

The Punjab amendment.—In the Punjab the section is to be read as indicated in the above amendment.<sup>1</sup>

Central Provinces amendment.—In the Central Provinces the section is to be read similarly.<sup>2</sup>

<sup>1</sup> Bom. Act XXIX of 1935, s. 2.

<sup>2</sup> The Punjab Act I of 1936.

<sup>3</sup> Central Provinces Act XIX of 1936.

295A, or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Provincial Government or some officer empowered by the Provincial Government in this behalf.

**COMMENT.**—The offences described in this section are offences against the State or public morals, and unless the Provincial Government grant sanction no prosecution can be instituted.

Chapter VI of the Indian Penal Code deals with offences against the State and Chapter IXA, with offences relating to elections; s. 108A, with abetment in British India of an offence committed outside its limits; s. 158A, with promoting enmity between classes; s. 294A, with lottery; s. 295A, with outraging religious feelings of any class; and s. 505, with statements conducing to public mischief.

If a charge under one of the specified sections fails for want of sanction, the accused can be convicted for any minor offence for which no sanction is necessary.<sup>1</sup>

Section 195 provides for attempt or abetment of the offences enumerated in that section, but there is no similar provision in this section.

1. 'Unless upon complaint made by order of, or under authority from, etc.'—This section requires that the complaint should be made upon authority from the Provincial Government or some officer empowered by the Provincial Government in this behalf. The section is imperative in its terms and must be strictly complied with. Any defect in procedure cannot be cured by s. 537.\* A Court cannot take cognizance of the offences specified in the section without the complaint as required by its terms.<sup>2</sup>

Sanction given after the filing of the complaint does not fulfil the requirements of this section.<sup>3</sup>

The authority under this section need not, in the case of the Provincial Government, be signed personally by the Governor; it is enough if it is signed by one of his accredited and gazetted officers.<sup>4</sup> The sanction must be signed by the Chief Secretary to the Government. An order signed by the Deputy Secretary on behalf of the Chief Secretary is not legal.<sup>5</sup>

Where the complainant omitted to name an accused person, in his petition of complaint made with the sanction of the Provincial Government to prosecute for offences falling within ss. 121A, 122 and 123 of the Penal Code, it was held that the accused not so named stood discharged from the trial initiated on such a complaint, even though his name appeared in the sanction authorizing the complaint. Under such circumstances, proceedings cannot be held to have been duly instituted against the accused person under this section, and the defect cannot be subsequently remedied in the course of the trial.<sup>6</sup>

'By order of, or under authority from.'—According to the Bombay High Court the section does not prescribe any particular form of order and does not require an order in writing.<sup>7</sup> The Madras High Court has held similarly that this section is a disabling section, and should not therefore be construed with the strictness applicable to an enabling section.<sup>8</sup>

<sup>1</sup> *Anani Puranik*, (1900) 25 Bom. 99, 2 Bom. L. R. 653.

<sup>2</sup> *Bhimaji Verkaji*, (1917) 42 Bom. 172, 20 Bom. L. R. 89; *Chidambaram Pillai*, (1908) 32 Mad. 3, 12.

<sup>3</sup> *P. Varadarajulu Naidu*, (1919) 42 Mad. 885.

<sup>4</sup> *Apurba Krishna Bose*, (1907) 35 Cal. 141.

<sup>5</sup> *Oziullah v. Beni Madhab*, (1922) 50 Cal. 135.

<sup>6</sup> *Lalit Mohan Chukerbutty*, (1911) 38 Cal. 559, F.B.

<sup>7</sup> *Bal Gangadhar Tilak*, (1897) 22 Bom. 112, 150.

<sup>8</sup> *P. Varadarajulu v. Public Prosecutor, Madura*, (1918) 42 Mad. 180.



The Calcutta High Court has held otherwise. Where an order under this section authorized a particular police-officer to prefer a complaint of offences under ss. 121A, 122, 123, and 124 of the Penal Code, *or under any other section of the said Code which may be found applicable to the case*, and the examination of the complainant also referred to the same sections, it was held that no complaint under s. 121 of the Penal Code was thereby authorized by the Provincial Government or in fact preferred, that the Magistrate had no power to commit thereunder, and that the defect was not cured by a subsequent order obtained while the case was before the Sessions Court, authorizing a complaint under the section which was not in fact made thereafter; nor did s. 532 of the Criminal Procedure Code apply in such a case. The Provincial Government cannot delegate to any other body or person the controlling power and discretion of determining whether cognizance shall be taken by the Court of an offence mentioned in this section, and its judgment must be specifically directed to the particular section, and no other, under which the prosecution is to be carried on, and the order or authority should be preceded by a deliberated determination in this respect. An order authorizing a complaint under certain specified sections "*or under any other sections found applicable*" if it means found by anyone other than Government, involves a delegation which cannot be sustained.<sup>1</sup>

Prosecution for certain classes of criminal conspiracy. 196A. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code, *or under any other sections found applicable*.

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the Provincial Government or some officer empowered by the Provincial Government in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, unless the Provincial Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Provincial Government,<sup>1</sup> has, by order in writing, consented to the initiation of the proceedings :

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary.

COMMENT.—This section applies only to a prosecution for conspiracy punishable under s. 120B, Penal Code, and not for abetment by conspiracy punishable under s. 109, Penal Code.<sup>2</sup>

If the sanction is obtained after the arrest of the accused, but before the examination of the witnesses and the framing of the charge, the requirements of this section are complied with.<sup>3</sup> A trial held on charges which did not require sanction along with such as were not cognizable without sanction could not be separated and the accused cannot be convicted of offences which did not require sanction.<sup>4</sup>

<sup>1</sup> *Barindra Kumar Ghose*, (1909) 37 Cal. 467.

<sup>2</sup> *Abdul Salim*, (1921) 49 Cal. 573; *V. M. Abdul Rahman*, (1924) 3 Ran. 95.

<sup>3</sup> *Ali Mia*, (1926) 54 Cal. 155.

<sup>4</sup> *Niharanchandra*; *Bhattacharya*, (1929) 57 Cal. 99.

1. 'Empowered in this behalf by the Provincial Government.'—This expression governs 'District Magistrate' as well as 'Chief Presidency Magistrate.' Hence a Chief Presidency Magistrate has no power to give consent to the initiation of proceedings for an offence of criminal conspiracy unless he is empowered in this behalf by the Provincial Government.<sup>1</sup>

**196B.** In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in section 155, subsection (3).

**COMMENT.**—The section provides for preliminary investigation by the police before complaints are made.

**197. (1)** When any person who is a Judge within the meaning of section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removeable from his office save by or with the sanction of a Provincial Government<sup>1</sup> or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty,<sup>2</sup> no Court shall take cognizance<sup>3</sup> of such offence except with the previous sanction—

(a) in the case of a person employed in connection with the affairs of the Federation, of the Governor General exercising his individual judgment; and

(b) in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province exercising his individual judgment.

**(2)** The Governor General or Governor, as the case may be, exercising his individual judgment may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

**(3)** In relation to the period elapsing between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation, the references in this section to the Federation and to the Governor General exercising his individual judgment shall be construed as references to the Governor General in Council.

**COMMENT.**—This section is intended to guard against vexatious proceedings against Judges, Magistrates, and public servants, without the sanction of higher authorities. The privilege of immunity from prosecution without sanction only extends to acts which can be shown to be in discharge of official duty.<sup>4</sup>

**Scope.**—The protection given by this section applies only to a person who is still a public servant at the time the prosecution is launched, but does not extend

<sup>1</sup> *Gray*, (1933) 36 Bom. L.R. 320, 58 Bom. 480.

<sup>2</sup> *Pichai Pillai v. Balasundara Mudaly*, (1935) 58 Mad. 781.

to a person who is no longer a public servant at that time, but was in office when the offence charged was said to have been committed. In order to prosecute such person no sanction under this section is necessary.<sup>1</sup>

1. 'Not removeable from his office, save by....Provincial Government.'—These words refer to "public servant" and not to "Judge." Sanction of the Government is necessary for the prosecution of a Judge but in the case of a public servant he must come within the category of public servants not removeable from their office without the sanction of Government. The section does not apply to public servants whom some lower authority has by law or rule or order been empowered to remove. It clearly intends to draw a line between public servants and to provide that only in the case of the higher ranks should the sanction of the Provincial Government to their prosecution be necessary. Thus an honorary organiser of Co-operative Credit Societies,<sup>2</sup> or a police constable or a Sub-Inspector of police,<sup>3</sup> or a receiver appointed by a civil Court<sup>4</sup> does not come in this category though he is appointed by Government and can be prosecuted without a sanction as contemplated by this section.

2. 'While acting or purporting to act in the discharge of his official duty.'—The officer concerned must be accused of having committed the offence complained of while he was acting or purporting to act in the discharge of his official duty.<sup>5</sup> It is not necessary that the act complained of should actually have been done while the public servant was acting or purporting to act in the discharge of his official duty. What the section requires is that the act shall be alleged to have been so done.<sup>6</sup> The section applies to acts committed by a public servant under the cloak of his official position, although those acts were not part of his duties.<sup>7</sup> The Patna High Court has held that an act which is the very contrary of the duties of a public servant cannot be said to be done by a public servant while acting or purporting to act in the discharge of his official duties.<sup>8</sup> The act of taking a bribe is not an act done in the execution of duty or purporting to be done in the execution of duty.<sup>9</sup> The offence must be so connected with the official act as to form part of the same transaction.<sup>10</sup> Where a Deputy Magistrate was engaged in demanding taxes from the inhabitants of a village for maintaining an additional police force and immediately after he had threatened the defaulters he turned towards the complainant and assaulted him, it was held that the alleged offence was connected with the official duty as to become inseparable from it, and that the sanction was necessary.<sup>11</sup>

Where a Judge was charged with using defamatory language to a witness during the trial of a suit, it was held that the complaint could not be entertained by a Magistrate without sanction.<sup>12</sup> The test is not whether the particular act is within his powers, but whether he acted in the capacity with which he is clothed. If he simply uses his position as a public servant to commit an illegal act he will not be acting as

<sup>1</sup> *Prasad Chandra Banerji*, [1944] 1 Cal. 118.

<sup>2</sup> *Gulabmiya*, (1930) 32 Bom. L. R. 1134.

<sup>3</sup> *Pichai Pillai v. Balasundara Mudali*, (1935) 58 Mad. 781.

<sup>4</sup> *Maung Saw Maung v. Ma Me Shwe*, [1939] Ran. 117.

<sup>5</sup> *Gangaraju v. Venki*, (1928) 52 Mad. 602, *Sivaramakrishna Ayyar v. Seshappa Naidu*, (1928) 52 Mad. 347, commented on; *Rai Krishnaji*, (1934)

57 All. 385.

<sup>6</sup> *Afzalur Rahman*, (1942) 22 Pat. 767.

<sup>7</sup> *S. Y. Patil v. Vyankataswami*, [1939] Nag. 419.

<sup>8</sup> *Afzalur Rahman*, sup.

<sup>9</sup> *Province of Bihar v. Rameshwar*, (1944) 23 Pat. 738; *Huntley*, [1944] F.C.R. 262, 28 Pat. 517.

<sup>10</sup> *Ram Singh*, (1934) 14 Pat. 299.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Rai Krishnaji*, sup.

such public servant. Sanction is not necessary where a public servant, in order to prevent encroachment on Government land, takes the law into his own hands by pulling down the encroachment and confining the person making it.<sup>1</sup> The illegal act cannot be said to have been committed under colour or in excess of the duty or authority as a public servant.

3. 'Take cognizance.'—No Court can take cognizance of an offence committed by a Judge or a public servant in his public capacity without a sanction. But the complainant can be examined without a sanction. The accused cannot be summoned or evidence against him cannot be taken without a sanction. Until the sanction is obtained, the tribunal by which the offence is triable has no jurisdiction, and a conviction founded on evidence taken without sanction is bad.<sup>2</sup>

A sanction obtained subsequently does not validate the proceedings.

4. 'Sanction.'—A sanction is an order directing the prosecution of a certain person, and in the ordinary way that order is conveyed to the authorities who are responsible for initiating prosecution in the locality in question.<sup>3</sup>

Sub-section (2).—This sub-section overrides the general rule in s. 177 as regards the Court of trial. The Governor General or the Governor may specify any Court. The sub-section does not require that the sanction should be addressed to any particular Court or officer, or that orders under it should necessarily be passed in every case.<sup>4</sup>

198. No Court shall take cognizance of an offence falling under

Prosecution for breach of contract, defamation and offences against marriage.

Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint<sup>1</sup> made by some person aggrieved<sup>2</sup> by such offence:

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf.

Provided further that where the husband aggrieved by an offence under section 494 of the said Code is serving in any of His Majesty's armed forces under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.<sup>†</sup>

COMMENT.—Chapter XIX of the Penal Code relates to criminal breaches of contracts of service; Chapter XXI, to defamation. Sections 493 to 496 relate to offences against marriage.

1. 'Complaint.'—The complaint must be by the person aggrieved. The person aggrieved is the person affected or injured. A charge of defamation not contained in the complaint presented to the Magistrate, but added subsequently by the Magistrate upon statements made by the complainant in his examination is

<sup>1</sup> *Hammant*, (1929) 31 Bom. L. R. 789.

<sup>2</sup> *Parsharam Keshav*, (1879) 7 B. H. C. (Cr. C.) 61.

<sup>3</sup> *Rudra Datt Bhatt*, (1933) 55 All. 798.

<sup>4</sup> *Desai Bhai*, (1937) 39 Bom. L. R. 1056.

<sup>†</sup> This proviso was added by Act XXVIII of 1948, s. 2.

not a legal "complaint" made by an aggrieved person so as to enable the Magistrate to take cognizance of the offence.<sup>1</sup>

2. 'Person aggrieved.'—It is impossible to lay down any inflexible rule for determining in every case whether the complainant is a person aggrieved by the offence alleged; it must be determined in each case according to its own circumstances whether the complainant can be said to be in a legal sense a person aggrieved.

The grievance referred to in the words "person aggrieved" does not contemplate any fanciful or sentimental grievance; it must be such a grievance as the law can appreciate; it must be a legal grievance and not a *stat pro ratione voluntas* reason.<sup>2</sup>

In bigamy, the person aggrieved is the husband<sup>3</sup> and not the father<sup>4</sup> or brother of the husband.<sup>5</sup> For the defamation of his wife the husband is the aggrieved person.<sup>6</sup> The President of a Municipality is not the person aggrieved for defamation of the officials of the Municipality.<sup>7</sup>

Where the alleged offence is defamation imputing unchastity to a Hindu widow, her brother, with whom she is residing at the time, is a "person aggrieved" by such imputation, and it is competent to the Court to take cognizance of the offence upon his complaint.<sup>8</sup>

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint<sup>1</sup> made by the husband of the woman, or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed:

Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf.

Provided further that where such husband is serving in any of His Majesty's armed forces under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, and where for any reason no complaint has been made by a person having care of the woman as aforesaid, some other person authorised by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.<sup>†</sup>

COMMENT.—The object of this section is to prevent Magistrates inquiring, of their own motion, into cases connected with marriage unless the husband or

<sup>1</sup> *Deokinandan*, (1887) 10 All. 39.

<sup>2</sup> *Daem Sardar v. Batu Dhalli*, (1905) 3 C. L. J. 88.

<sup>3</sup> *Deputy Legal Remembrancer v. Sarna Kahmt*, (1889) 26 Cal. 336; *Bai Rukshmoni*, (1886) 10 Bom. 340; *Banamali Tripathy*, (1942) 22 Pat. 263.

<sup>4</sup> *Lala*, (1909) 82 All. 78.

<sup>5</sup> *Imtiazan*, (1902) 25 All. 132; *Ramnarayan Kapur*, (1937) 39 Bom. L. R. 61, [1937] Bom. 244.

<sup>6</sup> *Chhotalal v. Nathabhai*, (1900) 25 Bom. 151, 2 Bom. L. R. 665, F.S.; *Chellam Naidu v. Ramasami*, (1891) 14 Mad. 379; *Gurdit Singh*, (1924) 5 Lah. 301.

<sup>7</sup> *Beauchamp v. Moore*, (1902) 26 Mad. 43.

<sup>8</sup> *Thakur Das Sar v. Adhar Chandra Misri*, (1904) 82 Cal. 425.

<sup>†</sup> This proviso was added by Act XXVIII of 1948, s. 3.

other person authorized moves them to do so.<sup>1</sup>

Section 497, Penal Code, relates to adultery; section 498, to the offence of enticing or taking away or detaining with a criminal intent a married woman.

1. 'Complaint.'—The word "complaint" means a "complaint" as defined in s. 4, cl. (h), of the Code.<sup>2</sup> Information lodged by the complainant before the police is not a complaint.<sup>3</sup> The complaint must be of the specific offence mentioned in this section, and not a complaint of any offence. The Court cannot add a charge of an offence referred to in this section without a formal complaint in respect of that charge by the person specified.<sup>4</sup>

An accused was charged with kidnapping or abducting a woman under s. 366, Penal Code, but the Sessions Judge, holding that the prosecution had failed to prove either kidnapping or abduction, convicted the accused, on the evidence, of an offence under s. 498. In doing so he purported to act under s. 238 of the Code. The complaint before the Court had been made by the husband, but was only general in terms. It was held that the conviction was bad.<sup>5</sup>

199A. When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.

COMMENT.—This section was added by Act XVIII of 1928 in order to safeguard the rights of a legally appointed guardian.

199B. (1) The authorisation of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 or the second proviso to section 199 shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by the Officer referred to in the said provisos, and shall be accompanied by a certificate signed by that officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(2) Any document purporting to be such an authorisation and complying with the provisions of sub-section (1), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.

<sup>1</sup> *Jatra Shekh v. Reazat Shekh*, 218, 9 Bom. L. R. 148; *Imankhan*, (1892) 20 Cal. 488.

<sup>2</sup> *Tara Prosad Laha*, (1908) 30 Cal. 910, F.B. <sup>3</sup> *Jatra Shekh v. Reazat Shekh*, sup.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Isaap Mahomed*, (1906) 81 Bom.

<sup>5</sup> *Bangaru Asari*, (1903) 27 Mad. 61.

**COMMENT.**—This section was added by Act XXVIII of 1948, s. 4. It says that the authorisation given under the second proviso to s. 198 or s. 199 should be in writing and should be signed or attested by the husband.

## CHAPTER XVI.

### OF COMPLAINTS TO MAGISTRATES.

**200.** A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath,<sup>1</sup> and the substance of the examination shall be reduced to writing<sup>2</sup> and shall be signed by the complainant, and also by the Magistrate<sup>3</sup>:

Provided as follows:—

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192;

(aa) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties;

(b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and where the complaint is made in writing, need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing;

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

**COMMENT.**—This Chapter lays down the procedure which a Magistrate empowered to take cognizance of an offence should follow when a complaint is made to him [*vide* s. 190 (1) (a)].

1. 'A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath.'—The Magistrate must examine the complainant even though the facts are fully set out in the written complaint.<sup>1</sup> The object of the examination is to find out whether the complaint is justifiable or whether it is frivolous or vexatious.<sup>2</sup> The Magistrate must not refer the complainant to a police-officer. He is bound to receive the complaint, and, after examining the complainant, to proceed according to law. A different course would foster abuses, and defeat the purpose of the law, which is to give to persons who have been injured an access to justice independent of the police.<sup>3</sup> A Magistrate is bound to examine the complainant and then can either issue summons to the accused, or

<sup>1</sup> *Satya Charan Ghose v. The Chairman of the Uterparah Municipality*, (1897) 3 C. W. N. 17.

<sup>2</sup> *Girdhari Lal*, (1911) P. R. No. 11

of 1911.

<sup>3</sup> *Jankidas Guru Sitaran*, (1887) 12 Bom. 161; *Lokenath Patra v. Sanyasi Charan Manja*, (1908) 30 Cal. 928.

order an inquiry under s. 202 or dismiss the complaint under s. 203.<sup>1</sup> He must give the complainant or his pleader an opportunity of being heard.<sup>2</sup>

The Calcutta High Court has held that when a complaint is presented on behalf of a *pardanashin* lady the Magistrate may issue a commission to examine her.<sup>3</sup> The former Chief Court of the Punjab held to the contrary.<sup>4</sup>

**Omission to examine complainant.**—Where the accused is not prejudiced the omission to examine the complainant may be treated as an error of procedure falling within the purview of s. 537.<sup>5</sup> Such a course is irregular but does not vitiate the entire proceedings.<sup>6</sup>

**'Upon oath.'**—Under the Indian Oaths Act, s. 6, an affirmation would do in the case of Hindus or Mahomedans. But where an accused person appears voluntarily before a Magistrate to answer a charge, the want of a complaint on oath becomes immaterial.<sup>7</sup>

2. **'The substance of the examination shall be reduced to writing.'**—Proviso (b) makes an exception in the case of a Presidency-Magistrate. In the case of other Magistrates the substance of the examination of the complaint should be reduced to writing and signed by the complainant. It is not a sufficient compliance with the provisions of this section where a complainant, who has presented a written complaint, is merely called upon to attest the complaint on oath, no separate sworn statement of the complainant being recorded by or under the orders of the Magistrate to whom the complaint is presented.<sup>8</sup>

3. **'Shall be signed by the complainant, and also by the Magistrate.'**—If the complainant refuses to sign he commits an offence under s.180 of the Indian Penal Code.

**Proviso (aa).**—When a complaint is made in writing by a Court or a public servant, the examination of the complainant is not necessary.

201. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

202. (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing,<sup>1</sup> postpone the issue of process for compelling the attendance of the person complained against,<sup>2</sup> and either inquire into the case himself<sup>3</sup> or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-

<sup>1</sup> *Umer Ali v. Safer Ali*, (1886) 13 Cal. 334.

<sup>2</sup> *Fani Bhusant Banerjee v. Kemp*, (1906) 10 C.W.N. 1086.

<sup>3</sup> *Abhayeswari Devi v. Kishori Mohan Banerjee*, (1914) 42 Cal. 19.

<sup>4</sup> *Sarb Dyah*, (1896) P. R. No. 10 of 1896.

<sup>5</sup> *Monu*, (1888) 11, Mad., 443. See

*Chidambaram Pillai*, (1908) 32 Mad. 3.

<sup>6</sup> *Bateshar*, (1915) 37 All. 628;

*Murphy*, (1887) 9 All. 666; *Girdhari Lal*, (1911) P. R. No. 11 of 1911.

<sup>7</sup> *Sadashivappa Pandurangappa*, (1868) 5 B. H. C. (Cr. C.) 29.

<sup>8</sup> *Kesri v. Muhammad Bakhs*, (1896) 18 All. 221.



officer, or by such other person as he thinks fit,<sup>4</sup> for the purpose of ascertaining the truth or falsehood of the complaint :

Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200.

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

**COMMENT.**—The duty of a Magistrate receiving a complaint is set out in this section and consists in finding out whether there is any matter which calls for investigation by a criminal Court. This section empowers a Magistrate, if he sees reason to distrust the truth of a complaint of an offence, to postpone the issue of process for compelling the attendance of the person complained against and to direct a previous local investigation to be made by a police-officer for the purpose of ascertaining the truth or falsehood of the complaint.<sup>1</sup>

1. 'If he thinks fit, for reasons to be recorded in writing.'—The Magistrate is bound to record the reasons before directing investigation if he, on examining the complainant, distrusts the statement of the complainant.<sup>2</sup> He must specify the grounds for not acting on the complaint. The Court of revision can thus ascertain whether his discretion was properly exercised.<sup>3</sup>

2. 'Postpone the issue of process for compelling the attendance of the person complained against.'—The Magistrate may, before issuing the process, under this section, take any preliminary steps for finding out whether the complaint is true or not. He may call upon the accused to show cause why a process should not issue against him. The accused may appear or not in obedience to that, whereas under a process issued under this section the accused is bound to appear.<sup>4</sup> The practice which prevails in the Courts of Presidency Magistrates, Bombay, of issuing a notice to the accused before issuing a process against him, is legal. If the Magistrate is satisfied with the accused's explanation he should dismiss the complaint.<sup>5</sup> The Madras High Court has in a full bench case held that unless a Magistrate is satisfied from an examination of the complainant and his witnesses that there is a *prima facie* case against the accused justifying the issue of a process under s. 204, the Magistrate is not entitled to call upon the accused to appear before him even optionally and to have his say against the complaint.<sup>6</sup>

3. 'Inquire into the case himself.'—The Magistrate may inquire into the case himself before directing any investigation by a subordinate Magistrate or a police-officer. The inquiry need not be confined to the evidence of the complainant himself. The Magistrate may examine such witnesses as he thinks fit.<sup>7</sup> The complainant must be given an opportunity to prove the truth of his complaint.

<sup>1</sup> *Golap Jan v. Bholanath Khettry*, (1911) 38 Cal. 880, 887.

<sup>2</sup> *Bala Lal v. Pasupati*, (1916) 27 C.W.N. 127.

<sup>3</sup> *Baidya Nath Singh v. Muspratt*, (1886) 14 Cal. 141.

<sup>4</sup> *Tukaram*, (1904) 6 Bom. L. R. 91.

<sup>5</sup> *Virbhan Bhagaji*, (1920) 30 Bom. L. R. 642, 52 Bom. 448.

<sup>6</sup> *Appa Rao Mudaliar v. Janaki Ammal*, (1926) 49 Mad. 918, F.B.

<sup>7</sup> *Kankuchand*, (1898) Unrep. Cr. C. 609, Cr. R. No. 27 of 1898.

But the accused should not be made a party to the proceedings; nor allowed to cross-examine the prosecution witnesses, or to adduce evidence for the defence.<sup>1</sup>

The inquiry under this section is different from the preliminary inquiry under Chapter XVIII. The Magistrate holding an inquiry under this section is not disqualified from trying the case himself.<sup>2</sup>

4. 'Direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit.'—Local investigation can be directed to a subordinate Magistrate and not to a superior Magistrate.<sup>3</sup> Where a Magistrate directs an investigation by the police, the police are bound to make a report to the Magistrate as the result of their investigation.<sup>4</sup> The report of such officer as well as the statements of the persons examined by him on which his report is based form part of the record of the case and the accused is entitled to have inspection and copies of both.<sup>5</sup>

The Magistrate may direct an inquiry or an investigation to be made by any person even though he is a clerk.<sup>6</sup>

Proviso.—The Magistrate is bound to examine the complainant in order to ascertain the truth of the complaint where such examination is prescribed by the Code.

203. The Magistrate before whom a complaint is made or to whom it has been transferred,<sup>1</sup> may dismiss the complaint,<sup>2</sup> if, after considering the statement on oath (if any) of the complainant<sup>3</sup> and the result of the investigation or inquiry (if any) under section 202,<sup>4</sup> there is in his judgment no sufficient ground for proceeding.<sup>5</sup> In such cases he shall briefly record his reasons for so doing.<sup>6</sup>

COMMENT.—Under this section a Magistrate may summarily dismiss a complaint if, after considering the statement on oath of the complainant and the result of the investigation under s. 202, there is no sufficient ground for proceeding. If proceedings are once commenced against the accused, after he is summoned, a complaint cannot be dismissed under this section.<sup>7</sup>

The High Court or the Sessions Judge or the District Magistrate may order further inquiry to be made into any complaint dismissed under this section (*vide* s. 436).

The dismissal of a complaint under this section does not amount to an acquittal (*vide* s. 403, Explan., *infra*).

1. 'Magistrate before whom a complaint is made or to whom it has been transferred.'—The complaint can be dismissed only by the Magistrate who has taken cognizance of it or by the Magistrate to whom it has been transferred for local investigation.

2. 'May dismiss the complaint.'—Sections 200 to 203 must be read together. 'A Magistrate may dismiss a complaint under s. 203 on any one of these three grounds. In the first place under s. 203 if he, upon the statement made by the complainant, reduced to writing under s. 200, finds that no offence has been committed; in the second place, if he distrusts the statement made by the com-

<sup>1</sup> *Bhim Lal Sah*, (1912) 40 Cal. 444. 54 Cal. 308.

<sup>2</sup> *Anando Chunder Singh v. Basu*, (1896) 24 Cal. 167. <sup>3</sup> *Maung Shein*, [1941] Ran. 590.

<sup>4</sup> *Kanchan Gorhi v. Ram Kishun*, (1908) 36 Cal. 72.

<sup>5</sup> *Bhiku Hossein*, (1912) 39 Cal. 1041.

<sup>6</sup> *Nurmahomed*, (1928) 81 Bom. L. R. 84, 53 Bom. 339; *Isaf Nasya*, (1926)

<sup>7</sup> *Budhunbhai*, (1891) Unrep. Cr. C. 544.

plainant he may also dismiss the complaint; and in the third place, if he distrusts the complainant's statement, but his distrust is not sufficiently strong to warrant him to act upon it, he may direct a further inquiry as provided in s. 200, and he may either conduct this inquiry himself or depute a subordinate officer to conduct it. These are the three cases in which a Magistrate has power to dismiss a complaint under s. 208 and refuse the issue of process."<sup>1</sup>

The reasons for dismissing a complaint should be based on inferences arising from or disclosed by (1) the complaint, (2) the examination of the complainant, (3) the investigation, if any, made under the powers conferred by s. 202 of the Code. This provides a wide field. Anything outside it is extra-judicial and must be discarded.<sup>2</sup>

Refusal to issue process against some of the persons charged with the commission of an offence is tantamount to a dismissal of the complaint against them.<sup>3</sup>

**Fresh complaint.**—The dismissal of a complaint under this section does not operate as a bar to the re-hearing of a fresh complaint on the same facts by the same Magistrate,<sup>4</sup> or by any other Magistrate presiding in the same Court,<sup>5</sup> even though such order of dismissal has not been set aside by a higher Court. The Madras and the Calcutta High Courts are of the opinion that any Magistrate having co-ordinate jurisdiction can take cognizance of such complaint.<sup>6</sup> The Allahabad High Court, on the other hand, has held that it would be contrary to sound principles to allow successive trials of complaints, based on the same allegations, by Magistrates presiding over different Courts, after the first complaint has been dismissed by a Magistrate of competent jurisdiction.<sup>7</sup> The mere fact that a superior Court has dismissed a petition for revision would not bar the institution of a fresh complaint. But only in exceptional circumstances a second complaint would be entertained on the same facts.<sup>8</sup> It is incumbent on the complainant to inform the second Magistrate of the dismissal of the first complaint.<sup>9</sup> A Presidency Magistrate is competent to re-hear a warrant case, under Chapter XXI of the Code, in which he has discharged the accused.<sup>10</sup>

**Result of dismissal.**—Dismissal of complaint under this section does not entitle the accused to compensation under s. 250.<sup>11</sup> But he can prosecute the complainant for making a false charge under s. 211 of the Penal Code.<sup>12</sup> If the complaint is dismissed without examining the complainant the Magistrate is not entitled

<sup>1</sup> *Baidya Nath Singh v. Muspratt*, (1886) 14 Cal. 141, 145; *Lokenath Patra v. Sanyasi Charan Manna*, (1903) 30 Cal. 928; *Subal Chandra v. Ahadulla*, (1926) 53 Cal. 606.

<sup>2</sup> *Mustafa v. Motilal*, (1907) 9 Bom. L. R. 742.

<sup>3</sup> *Girish Chunder Ghose*, (1902) 29 Cal. 457.

<sup>4</sup> *Chinna Kaliappa Gounden*, (1905) 29 Mad. 126, F.B.; *Dolegobind Dass*, (1900) 28 Cal. 211; *Kiru*, (1911) P. R. No. 10 of 1911, F.B.; *W. C. Keymer*, (1913) 36 All. 53; *Kunji Lal*, (1934) 56 All. 990; *Nga Pyu Di*, (1908) 2 L. B. R. 27, F.B.; *Namdeo*, [1945] Nag. 508.

<sup>5</sup> *Ram Bharos v. Baban*, (1914) 36 All. 129.

<sup>6</sup> *Ponnuswami Goundan*, (1931) 55 Mad. 622, F.B.; *Dolegobind Dass*, sup.

<sup>7</sup> *Ramanand*, (1933) 56 All. 425, disapproving *Adam Khan*, (1899) 22 All. 106.

<sup>8</sup> *Allah Ditta v. Karam Baksh*, (1930) 12 Lah. 9.

<sup>9</sup> *Mahadeo Laxman*, (1924) 27 Bom. L. R. 352.

<sup>10</sup> *Dwarka Nath Mondul v. Beni Madhab Banerji*, (1901) 28 Cal. 652, F.B.; *Jyotindra Nath Daw v. Hem Chandra Daw*, (1908) 36 Cal. 415.

<sup>11</sup> *Bhagwan Singh v. Harmukh*, (1906) 29 All. 137; *Harphul v. Manku*, (1906) P. R. No. 3 of 1906.

<sup>12</sup> *Surjya Hariani*, (1901) 6 C. W. N. 295; *Gunamany Sikpi*, (1899) 3 C.W.N. 758.

to sanction the prosecution of the complainant.<sup>1</sup>

3. 'After considering the statement on oath (if any) of the complainant.'—Where there is no statement on oath the Magistrate is bound to examine the complainant.<sup>2</sup> An order dismissing the complaint without examining the complainant is illegal.<sup>3</sup>

4. 'Result of the investigation or inquiry (if any) under section 202.'—The Magistrate must take into consideration the result of any investigation or inquiry. But the section empowers the Magistrate to dismiss the complaint without any investigation, if after examining the complainant he considers there is no sufficient ground for proceeding.<sup>4</sup>

5. 'No sufficient ground for proceeding.'—Where the matter complained of relates to a dispute cognizable by a civil Court, the Magistrate should refuse to entertain the complaint. But where the act complained of amounts to an offence the Magistrate should take action although a civil suit would afford the more convenient or appropriate remedy.<sup>5</sup>

6. 'In such case he shall briefly record his reasons for so doing.'—The Magistrate is bound to record his reasons where he dismisses the complaint; otherwise it would be impossible for the High Court to consider whether the discretion vested in the Magistrate has been properly exercised or not. Failure to record reasons is a direct disobedience of law and not a mere irregularity which could be cured by s. 537.<sup>6</sup>

## CHAPTER XVII.

### OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

204. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

<sup>1</sup> *Ningappa v. Rayappa*, (1924) 48 Bom. 360, 26 Bom. L. R. 183; *Mahadeo Singh*, (1900) 27 Cal. 921.

<sup>2</sup> *Lokenath Patra v. Sanyasi Charan Manna*, (1902) 30 Cal. 923.

<sup>3</sup> *Ningappa v. Rayappa*, sup.

<sup>4</sup> *Nawazi Singh v. Jadu Dhanuk*,

(1917) 19 Cr. L. J. 228.

<sup>5</sup> *Nubas Muhton*, (1867) 8 W. R. (Cr.) 65; *Niratan Sen v. Jogesh Chundra Bhattacharjee*, (1896) 23 Cal. 983.

<sup>6</sup> *Maniruddin Sircar v. Abdul Rauf*, (1912) 40 Cal. 41.

**COMMENT.**—This Chapter relates to commencement of proceedings before Magistrates. Where an accused has been summoned to appear before a Magistrate, proceedings commence under this Chapter and the Magistrate cannot thereafter dismiss the complaint under s. 203.<sup>1</sup>

The Magistrate will issue process under this section if there be sufficient grounds for proceeding. If there be no sufficient grounds he will dismiss the complaint under s. 203. The Magistrate in deciding whether process should issue must exercise a judicial discretion having regard to the materials duly placed before him.<sup>2</sup>

**205. (1)** Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused,<sup>1</sup> and permit him to appear by his pleader.<sup>2</sup>

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

**COMMENT.**—Under this section a Magistrate issuing a summons may dispense with personal attendance of the accused. The section covers every case in which a summons is issued. It is not confined to summons-cases only.<sup>3</sup> The Magistrate may direct the personal attendance of the accused at any stage of the proceedings. But if a warrant is issued against an accused person his personal attendance cannot be dispensed with.<sup>4</sup>

1. 'Dispense with the personal attendance of the accused.'—In criminal cases *pardanashin* women are not of right exempted from personal attendance at a Court.<sup>5</sup> Where a Magistrate issued a summons to a *pardanashin* woman alleged to be of good position, who was accused of an offence, it was held that the Magistrate should have dispensed with the personal attendance of the accused, and permitted her to appear by pleader, until such time as he had before him clear, direct, and reliable *prima facie* proof that the accused had a real charge to answer.<sup>6</sup>

2. 'Appear by his pleader.'—The only person who can appear in a case in which the personal attendance of the accused is dispensed with is a pleader. The term "pleader" is defined in s. 4 (r), *supra*. The accused may appoint his manager to appear in his stead and plead and do other acts on his behalf.<sup>7</sup>

Persons against whom proceedings are taken under Chapter VII of this Code are accused persons, and they have a right to be defended by a pleader.<sup>8</sup>

## CHAPTER XVIII.

### OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

**206. (1)** Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, or any Magistrate (not being a Magistrate of the

<sup>1</sup> *Budhunbhai*, (1891) Unrep. Cr. C. 544.

<sup>2</sup> *Subal Chandra v. Ahadulla Sheikh*, (1926) 53 Cal. 606.

<sup>3</sup> *Basumati Adhikarini v. Budram Kolia*, (1893) 21 Cal. 588.

<sup>4</sup> *Abdul Hamid*, (1923) 2 Pat. 798.

<sup>5</sup> *Farid-un-nissa*, (1882) 5 All. 92.

<sup>6</sup> *Rahim Bibi*, (1888) 6 All. 59; *Kandamani*, (1922) 45 Mad. 359.

<sup>7</sup> *Dorabshah Bomanji*, (1925) 28 Bom. L. R. 102, 50 Bom. 250.

<sup>8</sup> *Jhaja Singh*, (1896) 23 Cal. 403; *Girand*, (1903) 26 All. 875.

third class) empowered in this behalf by the Provincial Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.<sup>1</sup>

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

**COMMENT.**—The object of the law in providing that an inquiry shall be held before the accused has to undergo a trial in the Court of Session is to prevent the commitment of cases in which there is no reasonable ground for conviction. This provision of the law is calculated, on the one hand, to save the subjects from prolonged anxiety of undergoing trials for offences not brought home to them; and, on the other hand, to save the time of the Court of Session from being wasted over cases in which the charge is obviously not supported by such evidence as would justify a conviction.<sup>2</sup>

A Magistrate holding an inquiry under this Chapter has no power to declare an accused either guilty or innocent of the offence with which he is charged; he is not a Magistrate holding a trial, and although the dividing line may often be very thin, he has no power to pronounce definitely either upon the guilt or innocence of the accused. He can discharge an accused person at any earlier stage of the inquiry if he is satisfied that the case is groundless, but with this one exception, he has no option but to go on hearing all evidence produced before him, and by whichever side that evidence may be produced, and it is only after recording that evidence that he can consider whether there are or are not sufficient grounds for an order of committal.

1. 'Offence triable by such Court.'—Such offences are set out in Schedule II, col. 8. Some of these are exclusively triable by a Court of Session; others triable also by a Magistrate, but in which the Magistrate cannot inflict adequate punishment upon the accused.<sup>3</sup>

**Improper or illegal commitments.**—A commitment made with jurisdiction can only be quashed by the High Court (*vide s. 215*). Where a Magistrate without jurisdiction commits an accused to the Court of Session, the commitment is void.<sup>4</sup> Where the Magistrate has authority to commit but has no territorial jurisdiction in the place where the offence is committed, the irregularity is cured by s. 531 unless there is a failure of justice.<sup>5</sup>

See s. 532, *infra*, which provides for the validation of irregular commitments.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried<sup>1</sup> by such Court.

**COMMENT.**—A Magistrate who is competent to commit to the Court of Session may commit, not only cases exclusively triable by that Court, but also cases which in his opinion ought to be tried by that Court. If the Magistrate finds that the accused has committed an offence which in his opinion cannot be adequately punished by him, there would seem to be nothing to prevent his committing the case to the Court of Session, notwithstanding the fact that in the schedule appended to the Code the case may be shown as triable by a Magistrate.<sup>2</sup>

<sup>1</sup> *Lachman v. Juala*, (1882) 5 All. 161, 162.

<sup>2</sup> *Kayemullah Mandal*, (1897) 24 Cal. 420.

<sup>3</sup> *Alim Mundle*, (1882) 11 C. L. R. 55.

<sup>4</sup> *Rayan Kutti*, (1908) 26 Mad. 640.

<sup>5</sup> *Kayemullah Mandal*, *sup.*

1. 'Ought to be tried.'—These words must be read with s. 254 of the Code ; and a case which ought to be tried by a Court of Session is one which the Magistrate is not competent to try or in which in his opinion adequate punishment cannot be inflicted by him.<sup>1</sup>

208. (1) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

(2) The accused shall be at liberty to cross-examine the witnesses for the prosecution, and in such case the prosecutor may re-examine them.

(3) If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary<sup>1</sup> to do so.

(4) Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

COMMENT.—This section provides for the commencement of an inquiry.

Sub-section (1).—All the persons who are alleged or known to have knowledge of the facts ought to be brought before the Court and examined.<sup>2</sup> If such witnesses are not called without sufficient reason being shown, the Court may properly draw an inference adverse to the prosecution. The only thing that can relieve the prosecutor from calling such witnesses is the reasonable belief that, if called, they would not speak the truth.<sup>3</sup>

It is not necessary that the prosecution should place before the Court all the evidence on which they wish to rely at the trial. Evidence not produced in the committing Magistrate's Court is admissible in the Sessions Court.<sup>4</sup> But only those witnesses who were examined in the Magistrate's Court can be bound down to attend in the Sessions Court.<sup>5</sup>

A Magistrate inquiring into a case is not empowered to frame a charge or make out an order for commitment until after he had taken all such evidence as the accused may produce before him for hearing ; otherwise the order for commitment would be bad.<sup>6</sup> He ought to do this even when the confession of the accused has been recorded, as confessions are often retracted at the trial.<sup>7</sup>

Sub-section (2).—In an enquiry into cases triable by a Court of Session, the accused has no right to reserve cross-examination. The accused has a right to cross-examine the witnesses for the prosecution, but he must exercise that right, after the examination-in-chief of each prosecution witness.<sup>8</sup>

<sup>1</sup> *Pema*, (1902) 4 Bom. L. R. 85.

<sup>2</sup> *Ram Sahai Lall*, (1884) 10 Cal. 1070.

<sup>3</sup> *Kaliprasanno Doss*, (1886) 14 Cal. 245 ; *Stanton*, (1892) 14 All. 321 ; *Bankhandi*, (1892) 15 All. 6.

<sup>4</sup> *Jhabwala*, (1883) 55 All. 1040.

<sup>5</sup> *Mussamat Niamat*, (1886) 17 Lah. 176, F.B., overruling *Sher Bahadur*,

(1934) 15 Lah. 331.

<sup>6</sup> *Ahmadi*, (1898) 20 All. 264 ; *Muhammad Hadi*, (1903) 26 All. 177 ; *Kunwar*, (1923) 46 All. 187.

<sup>7</sup> *Mahadu Vithoba*, (1896) Unrep. Cr. C. 842.

<sup>8</sup> *G. V. Raman*, (1925) 57 Cal. 44 ; *Saadat Mian*, (1926) 6 Pat. 329.

**Sub-section (3).**—A Magistrate has a discretion, for reasons to be recorded by him, to refuse to summon witnesses under this section, prior to his making a commitment. Sub-section (1) contemplates the production of evidence by the prosecution or by the accused without the aid of the Magistrate. This sub-section contemplates the intervention of the Magistrate to secure the attendance of witnesses and in regard to the evidence the Magistrate has a discretion for reasons to be recorded by him to refuse to issue process.

See s. 257, *infra*, as to summoning the attendance of witnesses at the instance of the accused.

1. 'For reasons to be recorded, he deems it unnecessary.'—A Magistrate cannot refuse to take evidence tendered on behalf of the accused without recording his reasons.<sup>1</sup> The Bombay High Court has held that the reasons recorded by the Magistrate for refusing to issue process to witnesses asked for by a party should be such as would be regarded valid and acceptable by the appellate Court.<sup>2</sup> The Patna High Court is of the opinion that the appellate Court has only to see whether the Magistrate has complied with the provisions of the section.<sup>3</sup>

Under sub-section (4) a Presidency Magistrate is not bound to record his reasons.

**209. (1)** When the evidence referred to in section 208, sub-sections (1) and (3), has been taken, and he has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances<sup>1</sup> appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused<sup>2</sup> person for trial, record his reasons<sup>3</sup> and discharge him, unless it appears to the Magistrate that such person should be tried before himself<sup>4</sup> or some other Magistrate, in which case he shall proceed accordingly.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

**COMMENT.**—This section contemplates an order of discharge during an inquiry into an offence triable by a Court of Session. If the evidence establishes that there are not sufficient grounds for committing the accused, the Magistrate must discharge the accused. But if the evidence establishes an offence triable by the Magistrate and one for which he can pass an adequate sentence on conviction, he should proceed as on a trial.

1. 'Examined the accused. . . to explain any circumstances.'—It is the duty of a Magistrate, before committing accused persons for trial, to examine them for the purpose of enabling them to explain any circumstances appearing in the evidence against them. The effect of this section is that it is not left to the discretion of the Magistrate who intends to commit to examine the accused. He is bound to examine them, and if he makes an order of commitment without such examination the order is irregular.<sup>4</sup> The discretion given by the law is not to be used for the purpose of driving the accused to make statements criminating himself but that it can only properly be used for the purpose of ascertaining from the accused how he is able to meet facts standing in evidence against him, so that those

<sup>1</sup> *Sita*, (1876) Unrep. Cr. C. 100.

<sup>2</sup> *Yellappa Durgaji Jadhav*, (1929)

31 Bom. L. R. 523; *Saadat, Mian*, (1926) 6 Pat. 329, dissented from.

<sup>3</sup> *Saadat Mian*, sup.

<sup>4</sup> *Pandara Tevan*, (1900) 23 Mad. 636; *Hossein Buksh*, (1880) 6 Cal. 96.



facts should not stand against him unexplained.<sup>1</sup> The accused ought not to be examined with a view to filling up the gaps in the evidence for the prosecution.<sup>2</sup>

See s. 342, *infra*, as to the examination of the accused.

2. 'Not sufficient grounds for committing the accused.'—In order to ascertain whether there are sufficient grounds for committing the accused, the Magistrate may weigh the evidence, and if he discredits it, or if it does not justify a conviction, he should discharge the accused.<sup>3</sup>

The words "sufficient grounds for committing" mean, not sufficient grounds for convicting, but refer to a case in which the evidence is sufficient to put the accused on his trial, and such a case arises when credible witnesses make statements which, if believed, would sustain a conviction. It is not necessary that the Magistrate should satisfy himself fully of the guilt of the accused before making a commitment. It is his duty to commit when the evidence for the prosecution is sufficient to make out a *prima facie* case against the accused, and he exercises a wrong discretion if he takes upon himself to discharge an accused in the face of evidence which might justify a conviction.<sup>4</sup> Where a Magistrate is clearly of opinion that the evidence for the prosecution is on the whole untrustworthy and that there is no reasonable probability of the case ending in a conviction, he should not commit.<sup>5</sup>

A Magistrate has a wide discretion in the matter of weighing the evidence produced on one side or the other. But in the exercise of such discretion, if the question of discharge, or commitment, is one merely of probabilities, the inquiring Magistrate ought rather to leave the decision thereof to the Court of Session than to make an order of discharge because in his opinion the accused ought to have the benefit of doubt.<sup>6</sup> Where the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving that doubt and assessing the evidence should be left to the Court of Session.<sup>7</sup>

3. 'Record his reasons.'—It is necessary to record the reasons in order that the High Court may be in a position to consider whether the Magistrate has exercised his discretion correctly.<sup>8</sup> It is not necessary to write a judgment.<sup>9</sup>

4. 'Unless it appears to the Magistrate that such person should be tried before himself.'—Where a case is triable by a Court of Session as well as by a Magistrate, and the Magistrate thinks that the punishment which he could inflict would be adequate looking to the circumstances of the case, he need not commit it to the Court of Session. But a Magistrate in grave cases should always commit. He ought not to treat them as less grave in order to give himself jurisdiction.<sup>10</sup>

<sup>1</sup> *Chintibash Ghose*, (1878) 1 C. L. R. 436.

<sup>2</sup> *Basanta Kumar Ghatak*, (1898) 26 Cal. 49.

<sup>3</sup> *Lachman v. Juala*, (1882) 5 All. 161; *Bai Parvati*, (1910) 35 Bom. 163, 12 Bom. L. R. 923; *Kalyan Singh*, (1899) 21 All. 265.

<sup>4</sup> *Varjivandas*, (1902) 27 Bom. 84, 4 Bom. L. R. 779; *Namdev Satvajji*, (1897) 11 Bom. 372; *Hazara Singh v. Bishen*, (1908) P. R. No. 14 of 1908; *Maulu*, (1928) 4 Lah. 69; *Tarapada Biswas v. Kalipada Ghose*, (1924) 51 Cal. 849.

<sup>5</sup> *Bai Parvati*, (1910) 35 Bom. 163, 12 Bom. L. R. 923; *Tarapada Biswas*

*v. Kalipada Ghose*, *sup.*; *Muhammad Abdul Hadi v. Baldeo*, (1921) 44 All. 57; *Ganpat Lal*, (1924) 46 All. 537; *Himlu*, [1942] Nag. 438.

<sup>6</sup> *Fattu v. Fattu*, (1904) 26 All. 564; *Manikka Padayachi*, (1925) 48 Mad. 874.

<sup>7</sup> *Bai Parvati*, *sup.*; *Varjivandas*, *sup.*; *Maung Htin Gyaw v. Maung Po Sein*, (1926) 4 Ran. 471.

<sup>8</sup> *Maung Htin Gyaw v. Maung Po Sein*, *ibid.*

<sup>9</sup> *Het Ram v. Ganga Sahai*, (1918) 40 All. 615.

<sup>10</sup> *Jamal Mahomed v. Moideen Sa*, (1911) 12 Cr. L.J. 20.

**210. (1)** When, upon such evidence being taken<sup>1</sup> and such examination (if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused<sup>2</sup> for trial, he shall frame a charge<sup>3</sup> under his hand, declaring with what offence the accused is charged.

Charge to be explained, and, copy furnished, to accused. (2) As soon as such charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

**COMMENT.**—When the evidence referred to in s. 208 has been taken and the accused examined under s. 209, the Magistrate may either discharge the accused, or, if he finds that there are sufficient grounds for commitment, he shall frame a charge, and read and explain it to the accused.

1. 'Upon such evidence being taken.'—These words refer to evidence to be taken under s. 208. Under s. 347, *infra*, a Magistrate may at any stage of a trial before him commit a case to the Court of Session or High Court.

2. 'The Magistrate is satisfied that there are sufficient grounds for committing the accused.'—A charge should be framed and commitment made only when the Magistrate is satisfied that there are sufficient grounds for committing. The Magistrate ought to commit when the evidence is enough to put the accused on his trial, and such a case obviously arises where witnesses make statements which, if believed, would sustain a conviction. The weighing of their testimony in regard to apparent discrepancies is properly a function of the Court having jurisdiction to try the case. The words "sufficient grounds for committing" are not identical with sufficient grounds for convicting, since taken in that sense the provisions of the Code would enable the Magistrate virtually to supersede the Court of Session to which the cognizance of the case for actual trial belongs.<sup>1</sup>

3. 'Frame a charge.'—See s. 4 (c) as to the definition of "charge". The mere framing of a charge against the accused is distinct from, and does not amount to, an order of commitment which has to be made under s. 213. After the charge is framed the Magistrate does not become *functus officio* in respect of the case. He can amend the charge or proceed with the case himself; he can consider whether he ought to commit or not. But once an order of commitment is passed under s. 213, the Magistrate has no power to proceed with the case.<sup>2</sup>

**211. (1)** The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

(2) The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

<sup>1</sup> *Nandoo Satvaji*, (1887) 11 Bom. 372; *Varjivandas*, (1902) 27 Bom. 84, 4 Bom. L. R. 779; *Bai Parvati*, (1910) 35 Bom. 163, 12 Bom. L. R. 923; *Bai Mahalaxmi*, (1915) 17 Bom. L. R. 910;

*Kalyan Singh*, (1899) 21 All. 265; *Fattu v. Fattu*, (1904) 26 All. 564; *Dharam Singh v. Joti Prasad*, (1915) 37 All. 355.  
<sup>2</sup> *Venkatesh*, (1910) 12 Bom. L. R. 521.

**COMMENT.**—After the charge has been read and explained to the accused under sub-section (2) of the preceding section, the Magistrate must call upon him to give in at once, orally or in writing, a list of the persons whom he wishes to be summoned to give evidence on his trial. Refusal to summon witnesses cited by the accused on the ground of their being implicated in the charge vitiates the trial and conviction.<sup>1</sup>

**Refusal by accused to give list of witnesses.**—The Magistrate cannot force the accused to disclose either the names of his witnesses or what those witnesses would be called upon to prove. An accused person is entitled, when before a committing Magistrate, to reserve his defence, and to refuse to disclose the names of the witnesses whom he intends to call at the Sessions trial.<sup>2</sup>

**212.** The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.  
**Power of Magistrate to examine such witnesses.**

**213. (1)** When the accused, on being required to give in a list<sup>1</sup> under section 211, has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.<sup>2</sup>  
**Order of commitment.**

**(2)** If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused.

**COMMENT.**—When the evidence referred to in s. 208 has been taken and the accused examined under s. 209, the Magistrate may either discharge the accused, or, if he finds there are sufficient grounds for commitment, he shall frame a charge, and read and explain it to the accused. After that the Magistrate has to direct the accused to give in, orally or in writing, a list of his witnesses (s. 211). When the list has been given, the Magistrate may in his discretion summon and examine any witnesses named in it. It is only after all this procedure has been followed that the Magistrate can make an "order of commitment" recording briefly his reasons for it.

The mere framing of a charge against the accused, as required by s. 210, is distinct from and does not amount to an order of commitment, which has to be made under this section.<sup>3</sup>

**1.** 'On being required to give in a list.'—If a Magistrate commits an accused to the Court of Session without asking him if he wishes to have any witnesses to be summoned, the omission may be supplied subsequently.<sup>4</sup>

**2.** 'Shall also record briefly the reasons for such commitment.'—The Magistrate must record the reasons for committing the accused to the Court

<sup>1</sup> *Ram Sahai Chowdhry v. Sanker Bahadur*, (1871) 6 Beng. L. R. (App.) 65.

<sup>2</sup> *Hargobind Singh*, (1892) 14 All. 242.

<sup>3</sup> *Venkatesh*, (1910) 12 Bom. L. R. 521.

<sup>4</sup> *Hurnath Roy*, (1865) 2 W. R. (Cr.) 50.

of Session or the High Court.<sup>1</sup> A Presidency Magistrate is exempted from the necessity of recording such reasons.

A Magistrate is not at liberty to commit a case to the Court of Session, the offences in which are triable by himself, merely on the ground that the accused desires the case to be so committed or that the case involves a complicated question of law.<sup>2</sup>

Sub-section (2).—This sub-section enables the Magistrate, after hearing the evidence for the defence, to cancel the charge and discharge the accused if there are not sufficient grounds for committing him.

214. [*Person charged outside presidency-towns jointly with European British subject.*] Omitted by s. 10 of Act XII of 1923.

215. A commitment once made<sup>1</sup> under section 218 by a Quashing com- competent Magistrate<sup>2</sup> or by a Civil or Revenue mitments under Court under section 478, can be quashed by the section 218. High Court only, and only on a point of law.<sup>3</sup>

COMMENT.—This section relates only to commitments made by a Magistrate or Court specified therein. Such committals can be set aside by the High Court only on a point of law. There may be cases in which there is no evidence to warrant a commitment, or in which a commitment is made on no legal evidence at all. In such cases action may be taken as on a point of law under this section.<sup>4</sup>

Scope.—The section is not applicable to a case in which the commitment has been made under the directions of the High Court under s. 526 (1), or of the District Magistrate or Sessions Judge under s. 436 (now s. 437).<sup>5</sup>

1. 'Commitment once made.'—There must be an actual commitment by a Magistrate. Mere directions to commit are not sufficient. A commitment once made stands unless quashed by the High Court, and if the High Court is not moved to quash the commitment, the trial of the accused persons must take place in pursuance thereof.

2. 'Competent Magistrate.'—See s. 206, *supra*; as to Magistrates competent to commit. The Court to which a commitment has been made by a Magistrate who is not competent<sup>6</sup> to commit may accept the commitment if the accused is not prejudiced thereby (*vide* s. 532, *infra*).

According to the Bombay and the Allahabad High Courts commitment of a case to a Court of Session which has no territorial jurisdiction cannot be set aside unless it appears that the error has occasioned a failure of justice.<sup>7</sup> The Madras High Court has, however, held that commitment of the accused by a wrong Court is an irregularity, but commitment to a wrong Court is an illegality and ought to be quashed.<sup>8</sup>

3. 'Can be quashed by the High Court only, and only on a point of law.'—The High Court only has been invested with the power of quashing a commitment, and that only on a point of law. Where a Magistrate after committing a person for trial by the Court of Session on a charge of adultery, afterwards discharged the accused on the representation of the prosecutor that he wished to with-

<sup>1</sup> *Nanji Samal*, (1913) 38 Bom. 114, 15 Bom. L. R. 959; *Mahamad Khan*, (1908) 11 Bom. L. R. 18.

<sup>2</sup> *Krishnajit Landge*, (1945) 47 Bom. L. R. 659.

<sup>3</sup> *Mihir Lal*, [1940] All. 561.

<sup>4</sup> *Kalagava Bapiiah*, (1903) 27 Mad. 54.

<sup>5</sup> *Thaku*, (1884) 8 Bom. 312; *Ram Dei*, (1896) 18 All. 350.

<sup>6</sup> *Assistant Sessions Judge, North Arcot v. Ramammal*, (1911) 36 Mad. 387.

draw from the prosecution, it was held that the order of discharge was illegal.<sup>1</sup>

An improper exercise of judicial discretion in committing is a point of law according to the Bombay<sup>2</sup> and the Calcutta<sup>3</sup> High Courts, but not according to the Madras High Court.<sup>4</sup>

The Bombay High Court has held that an order of commitment cannot be quashed on the ground that there is no evidence in the Magistrate's record to sustain the charges.<sup>5</sup> But the Calcutta, the Allahabad and the Rangoon High Courts have laid down that absence of evidence to warrant a commitment is a point of law and may furnish a good ground for the quashing of a commitment.<sup>6</sup>

Where the commitment is made to the High Court, an application to quash such a commitment should be made to the Appellate Side of the High Court.<sup>7</sup>

The Calcutta High Court has held in a full bench case that a Judge of the High Court, exercising original criminal jurisdiction, can quash a commitment made to it.<sup>8</sup> The Bombay High Court has held that he has no such powers.<sup>9</sup>

**216.** When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list, as have not appeared before himself,<sup>1</sup> to appear before the Court to which the accused has been committed:

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Provided, also, that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witnesses is material,<sup>2</sup> and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal),<sup>3</sup> or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

**COMMENT.**—Under this section the Magistrate is bound to summon such of the witnesses included in the list furnished by the accused as have not appeared

<sup>1</sup> *Jangbir*, (1881) 4 All. 150; *Devji*, (1893) 18 Bom. 581; *Venkatagiri v. N. M. Firm*, (1919) 43 Mad. 361.

<sup>2</sup> *Pema*, (1902) 4 Bom. L. R. 85; *Nanjī Samal*, (1913) 38 Bom. 114, 15 Bom. L. R. 999; *Bhimaji Venkaji*, (1917) 42 Bom. 172, 20 Bom. L. R. 89; *Achaldas Jethamal*, (1925) 28 Bom. L. R. 293; *contra*, *Suleman Ibrahim*, (1911) 18 Bom. L. R. 201.

<sup>3</sup> *Kayemullah Mandal*, (1897) 24 Cal. 429.

<sup>4</sup> *Crown Prosecutor v. Bhagavathi*, (1918) 42 Mad. 83.

<sup>5</sup> *Suleman Ibrahim*, (1911) 18 Bom.

L. R. 201.

<sup>6</sup> *Jogeshwar Ghose*, (1901) 5 C. W. N. 411; *Sheobux Ram*, (1905) 9 C. W. N. 829; *Narotam Das*, (1884) 6 All. 98; *Mahomed Moidin*, (1924) 1 Ran. 526.

<sup>7</sup> *Crown Prosecutor v. Bhagavathi*, (1916) 42 Mad. 83; *Mackay*, (1926) 53 Cal. 350, F.B.; *Hussainalli Villayatali*, (1942) 44 Bom. L. R. 433, [1942] Bom. 540.

<sup>8</sup> *Girish Chandra Kundu*, (1929) 56 Cal. 785, F.B.

<sup>9</sup> *Hussainalli v. Villayatali*, *sup.*

before him.<sup>1</sup> Where the accused is committed to the High Court the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown.

The Magistrate may refuse to summon witnesses whom he thinks to have been included in the list for the purpose of vexation, delay, or defeating the ends of justice, or he may before summoning them require the accused to deposit a sum of money to defray the expenses of obtaining their attendance.

**217. (1)** Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

**(2)** If any complainant or witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

**218. (1)** When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Provincial Government<sup>1</sup> in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge ;

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

**(2)** When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

**COMMENT.**—After the accused is committed for trial (s. 218) the Magistrate should give notice under this section to the officer appointed to conduct the prosecution. (Schedule V, No. 27, contains a form of such notice.)

He should forward the record and the exhibits to the Court before which the trial is to take place.

1. 'Such person as may be appointed by the Provincial Government.'  
—That is, the Public Prosecutor, the Government Pleader, or such other officer specially appointed by the Government.

<sup>1</sup> *Prosunno Doomar Motro*, (1875) 6 Cal. 714.  
28 W. R. (Cr.) 56 ; *Della Monton*, (1881)

**219. (1)** The committing Magistrate, or, in the absence of such Magistrate, any other Magistrate empowered by or under section 206 may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

(2) Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall be given to the accused free of cost.

**COMMENT.**—This section gives power to summon and examine any person as a witness, or to recall and re-examine any person already examined, if his evidence appears to be essential to a just decision of the case (*vide* s. 540, *infra*). Such witness must be examined in the presence of the accused if practicable. The accused should be given an opportunity to call witnesses to meet such evidence.<sup>1</sup>

After the trial has commenced the Sessions Judge has no authority to direct the committing Magistrate to call additional witnesses, as the Magistrate's power to do so ceases with the commencement of the trial.<sup>2</sup> The Sessions Judge can cause witnesses to be summoned before himself.

**220.** Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

Custody of accused pending trial.

## CHAPTER XIX.

### OF THE CHARGE.

#### *Form of Charges.*

Charge to state offence.

**221. (1)** Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence must be described in the charge by that name only.

Specific name of offence sufficient description.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence has no specific name.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charge.

<sup>1</sup> *Deela Mahton*, (1881) 6 Cal. 714.

<sup>2</sup> *Hasan*, (1888) P. R. No. 29 of 1888.

(6) In the presidency-towns the charge shall be written in English ; elsewhere it shall be written either in English or in the language of the Court.

(7) If the accused having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it at any time before sentence is passed.

## ILLUSTRATIONS.

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code ; that it did not fall within any of the general exceptions of the same Code ; and that it did not fall within any of the five Exceptions to section 300, or that, if it did fall within Exception I, one or other of the three provisos to that Exception apply to it.

(b) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code ; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

COMMENT.—The provisions relating to "charges" are intended to provide that "the charge" shall give the accused full notice of the offence charged against him.

In summons-cases no formal charge need be framed (s. 242, *infra*) ; but in warrant-cases, if the Magistrate is of the opinion that a *prima facie* case has been made out, a charge must be framed (s. 254, *infra*).

Sub-section (1).—The term "charge" is defined in s. 4 (c), *supra*. It is used throughout the Code (except in Form 28, Schedule II) as meaning the statement of a specific offence, and not as indicating the entire series of offences of which a prisoner is accused.<sup>1</sup> The charge should be clear and specific.

Sub-section (4).—A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable.<sup>2</sup> It should specify distinctly that part of the section which is applicable to the case.<sup>3</sup>

<sup>1</sup> *Appa Subhana Mendre*, (1884) 8 Bom. 200 ; *Chardon*, (1887) 9 All. 525. <sup>2</sup> *Abaji Ramchandra*, (1890) 15 Bom. 189.  
<sup>3</sup> *Durzoolla*, (1868) 9 W. R. (Cr.) 33.



**Sub-section (5).—**See *ills. (a) and (b)*. The allegation that an accused has committed a particular offence negatives his coming within any of the general or special exceptions which would condone the offence.

**Sub-section (7).—**This sub-section says how previous conviction is to be set out. Where it is intended to prove a previous conviction for the purpose of enhancing the punishment, it should be entered in the charge and the accused should be called on to plead thereto; his mere admission that he had been in jail once is insufficient to show that he pleaded guilty to a previous conviction.<sup>1</sup> Where the previous convictions are denied, the prosecution is bound to prove that there were such convictions and that the accused was the person convicted.<sup>2</sup>

Section 511, *infra*, says how previous conviction may be proved. See also sections 48 and 54 of the Indian Evidence Act.

Section 310, *infra*, lays down the procedure to be followed in the Court of Session or High Court in a trial in which the accused is charged with an offence committed after a previous conviction of any offence.

**Charge under s. 75, Penal Code.**—If the accused is to be tried for an offence punishable under s. 75 of the Penal Code, a separate charge under that section must be framed and recorded.<sup>3</sup>

**222. (1)** The charge shall contain such particulars as to the Particulars as to time and place of the alleged offence, and the person time, place and (if any) against whom, or the thing (if any) in person. respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed,<sup>4</sup> and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates,<sup>5</sup> and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234:

Provided that the time included between the first and last of such dates shall not exceed one year.<sup>6</sup>

**COMMENT.**—An accused person is entitled to know with certainty and accuracy the exact nature of the charge brought against him. Unless he has this knowledge he must be seriously prejudiced in his defence.<sup>4</sup>

**Sub-section (2).—1.** ‘Sufficient to specify the gross sum in respect of which the offence is alleged to have been committed.’—This section clearly admits of the trial of any number of acts of breach of trust committed within a year as amounting only to one offence. It does not require any particular formulation of the accusation, but only enacts that it is sufficient to show the aggregate offence without specifying the details. The section does not prohibit the enumeration of particular items in the charge.<sup>5</sup>

<sup>1</sup> *Govind*, (1902) 4 Bom. L. R. 177.

<sup>2</sup> *Weir* 286.

<sup>3</sup> *Dorasami*, (1886) 9 Mad. 284.

<sup>4</sup> *Behari Mahton*, (1884) 11 Cal. 106, 108.

<sup>5</sup> *Datto*, (1905) 7 Bom. L. R. 638, 30 Bom. 49; *Samiruddin Sarkar v. Nibaran Chandra Ghose*, (1904) 31 Cal. 928; *Sa' Narain Tewari*, (1905) 32 Cal. 1085.

2. 'Without specifying particular items or exact dates.'—When the accused is charged with criminal breach of trust or dishonest misappropriation of money, the particular items or exact dates on which the offence was committed need not be stated. It is not necessary to specify the separate sums which have been embezzled.<sup>1</sup> It is sufficient that some of the money mentioned in the charge has been misappropriated, even though it may be uncertain what is the exact amount so misappropriated.<sup>2</sup> The mere fact that the items composing the amount embezzled are specified and may be more than three in number will not render the charge obnoxious.<sup>3</sup>

3. 'Time .... shall not exceed one year.'—Any number of acts of breach of trust committed within one year amounts only to one offence. But where a series of acts extends over more than a year the joinder of charges is illegal.<sup>4</sup>

Case.—The accused was charged with having, on or about a certain date, committed theft in respect of eight necklaces. The evidence disclosed that he had committed criminal breach of trust in respect of two of the necklaces on different dates more than a year apart, and it was not clear as to when he had misappropriated the others. It was held that the trial was vitiated in the same way as if there had been a misjoinder of charges.<sup>5</sup>

223. When the nature of the case is such that the particulars men-

When manner of committing offence must be stated. tioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

#### ILLUSTRATIONS.

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

COMMENT.—When the particulars mentioned in ss. 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the Magistrate must give in the charge such particulars of the manner in which the alleged offence was committed, as will be sufficient for that purpose.

<sup>1</sup> *Raman Behari Das*, (1918) 41 Cal. 722; *Ibrahim Khan*, (1916) 33 All. 86.

<sup>2</sup> *Byramji Chawalla*, (1927) 30 Bom. L. R. 325, 32 Bom. 280; *Vinayak Bhatkhande*, (1938) 30 Bom. L. R. 1530, 53 Bom. 119.

<sup>3</sup> *Gulzari Lal*, (1902) 24 All. 254; *Ishtiaq Ahmad*, (1904) 27 All. 69; *Shiam Sundar*, (1980) 6 Luck. 485.

<sup>4</sup> *Dhanjibhoy v. Kaim Khan*, (1904) P. R. No. 14 of 1905.

<sup>5</sup> *Raman Lal*, (1926) 49 All. 312.

Words in charge taken in sense of law under which offence is punishable.

**224.** In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

**225.** No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

#### ILLUSTRATIONS.

(a) A is charged under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(d) A is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

**COMMENT.**—This section is intended to prevent any failure of justice for non-compliance with the matters required to be stated in the charge.<sup>1</sup> Unless the irregularity in the charge has misled the accused and occasioned a failure of justice, a conviction cannot be set aside.

Sections 226, 232, 535 and 537 also deal with the same question. Section 232 provides for re-trial of the accused where the charge contains a material error.

**226.** When any person is committed for trial without a charge, or with an imperfect or erroneous charge,<sup>1</sup> the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge or add to or otherwise alter the charge,<sup>2</sup> as the case may be, having regard to the rules contained in this Code as to the form of charges.

Procedure on commitment without charge or with imperfect charge.

<sup>1</sup> *Yeshwant*, (1926) 28 Bom. L. R. 497.

## ILLUSTRATIONS.

1. A is charged with the murder of C. A charge of abetting the murder of C may be added or substituted.

2. A is charged with forging a valuable security under section 467 of the Indian Penal Code. A charge of fabricating false evidence under section 198 may be added.

3. A is charged with receiving stolen property knowing it to be stolen. During the trial it incidentally appears that he has in his possession instruments for the purpose of counterfeiting coin. A charge under section 235 of the Indian Penal Code cannot be added.

**COMMENT.**—This section provides for the procedure when a person is committed for trial without a charge or with an imperfect or erroneous charge. It enables the Court of Session in a case committed to it, or the Clerk of the Crown in a case committed to the High Court, to frame a charge where there has been no charge, or to add to or otherwise alter the charge when the charge in respect of which the commitment has been made is imperfect or erroneous. The Clerk of the Crown has wide powers to revise and re-draft charges with reference to any offence in respect of which the committing Magistrate has framed a charge.<sup>1</sup>

This section only applies to Courts of Session and High Courts. The next section applies to all Courts.

The illustrations to this section indicate that a charge of an offence so added must be of an offence similar to that on which the commitment has been made, see ill. (3). Otherwise the provisions of s. 193 would be infringed.

1. 'Committed for trial without a charge, or with an imperfect or erroneous charge.'—The words "without a charge" apply not only to a case in which there is no charge at all, but also to a case in which there is no charge in respect of such offence as the Sessions Judge or Clerk of the Crown may think the accused ought to be tried for.<sup>2</sup>

2. 'Add to or otherwise alter the charge.'—The Court has power to add a new charge (s. 227, *infra*). The word "alter" includes withdrawal by a Sessions Judge of a charge added by him to the charge on which the commitment has been made.<sup>3</sup>

The power to alter a charge ought to be exercised with caution and discretion. A new charge cannot be added after the close of the case for the defence.<sup>4</sup>

**227. (1)** Any Court may alter or add to any charge<sup>1</sup> at any time Court may alter before judgment is pronounced,<sup>2</sup> or, in the case of charge. trials before the Court of Session or High Court, before the verdict of the jury is returned<sup>3</sup> or the opinions of the assessors are expressed.

(2) Every such alteration or addition shall be read and explained to the accused.

**COMMENT.**—This section applies to all Courts: the preceding section, to Courts of Session and High Courts only.

1. 'Court may alter or add to any charge.'—The Court has power to add to a charge.<sup>4</sup> The word "alter" includes withdrawal by a Sessions Judge of

<sup>1</sup> *Huseinalli Vilayattil*, (1942) 44 All. 551.  
Bom. L. R. 433, [1942] Bom. 540.

<sup>2</sup> *Appa Subhana Mendre*, (1884) 8 (Cr. C.) 76; *Govindas Haridas*, (1869) 6 B. H. C.  
Bom. 200; *Vajiram*, (1892) 16 Bom. 414. *Mathura Thakur*, (1901)  
<sup>3</sup> *Dwarkan Lal v. Mahadeo Rai*, (1890) 6 C. W. N. 72.

a charge added by him to the charge on which the commitment has been made.<sup>1</sup> But he cannot withdraw a charge so that the accused may be deprived of the right of trial by jury.<sup>2</sup> The Court may alter or add to any charge upon its own motion or on application by the prosecution which should be made immediately after the charge is explained by the Magistrate.<sup>3</sup>

Addition or alteration of a charge should not prejudice the accused.<sup>4</sup>

2. 'At any time before judgment is pronounced, etc.'—The Court may alter or add to the charge at any time before judgment is pronounced<sup>5</sup> or the verdict of the jury is returned or the opinion of the assessors is expressed as the case may be. But it must exercise a sound and wise discretion in so doing.<sup>6</sup> If it wishes to strike out any of the charges it should do so before concluding the trial, and should give the accused an opportunity of making such defence as he thinks fit, otherwise the trial is vitiated.<sup>7</sup>

3. 'Before the verdict of the jury is returned, etc.'—On a trial by jury the Sessions Judge has no power to alter the charge after the delivery of the verdict.<sup>8</sup> Similarly the charge cannot be altered after the opinions of the assessors are expressed.

The words "return of the verdict" mean the return of the final verdict which the Judge is bound to record.<sup>9</sup>

228. If the charge framed or alteration or addition made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

COMMENT.—The Court should proceed with the trial if the charge framed or addition made to the charge is not likely to prejudice the accused in his defence or the prosecution in the conduct of the case. The Court should treat the new or altered charge as the original charge. But where it is doubtful whether an amendment of a charge will or will not prejudice the accused in his defence upon the merits the amendment ought to be made.<sup>10</sup>

The addition or alteration of a charge does not open up the trial from the beginning and the Court may immediately proceed with the trial if it is of opinion that there will be no prejudice to the accused.<sup>11</sup>

229. If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

<sup>1</sup> *Dwarka Lal v. Mahadeo Rat*, (1890) 12 All. 551.

<sup>2</sup> *Ramsundar Isser*, (1925) 5 Pat. 238.

<sup>3</sup> *Abdur Rahman*, (1900) 27 Cal. 889, F.B.

<sup>4</sup> *Mathura Thakur*, (1901) 6 C. W. N. 72; *Isap Mahomed*, (1906) 31 Bom. 218, 9 Bom. L. R. 148; *Mati Lal Lahiri*, (1899) 26 Cal. 560.

<sup>5</sup> *Manavala Chetty*, (1906) 29 Mad. 569.

<sup>6</sup> *Mathura Thakur*, sup.

<sup>7</sup> *Chetto Katwar*, (1921) 49 Cal. 555.

<sup>8</sup> *Shek Ali*, (1868) 5 B. H. C. R. 9.

<sup>9</sup> *Appa Subhana Mendre*, (1884) 8 Bom. 200.

<sup>10</sup> *Goddardas Haridas*, (1869) 6 B. H. C. (Cr. C.) 76.

<sup>11</sup> *Shamlal Kakwar*, (1921) 1 Pat. 54.

**COMMENT.**—Looking to the principle laid down in ss. 227, 228 and 229, it is clear that the intention of the Legislature is, that whenever an amendment of the charge in any way tends to prejudice the prisoner, steps should be taken to prevent that consequence arising by ordering a new trial, or suspending the trial going on, to enable him to make his defence, or to examine any material witness, or to recall any witnesses already examined. The same principle extends to all instances of material prejudice arising to anyone under trial from an amendment made in the course of the proceedings.<sup>1</sup>

**230.** If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

**COMMENT.**—This section declares that when previous sanction is necessary for the new or altered or added charge, such sanction should be obtained; but it will not be necessary to do so if sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

**231.** Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.

Recall of witnesses when charge altered.

**COMMENT.**—The accused has a right to recall prosecution witnesses after the alteration of the charge, even if such alteration does not affect his defence.<sup>2</sup> But no duty is laid on the Court to ask the accused, after the charge has been altered, to state whether he wishes to have any of the witnesses recalled or re-examined and whether he wishes to call any further witnesses.<sup>3</sup>

**232. (1)** If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

Effect of material error.

**(2)** If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

#### ILLUSTRATION.

A is convicted of an offence, under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

<sup>1</sup> Per West, J., in *Govind Babli Raul*, 346.

(1874) 11 B. H.C. R. 278, 279.

<sup>2</sup> *Ramalinga Odayar*, (1938) 52 Mad.

<sup>3</sup> *Koumal*, (1929) 52 All. 455.

**COMMENT.**—This section gives the Appellate Court or the High Court power to direct a re-trial on the ground that the accused has been misled in his defence by the absence of a charge or by an error in the charge. The power so given is quite apart from the general powers given to an Appellate Court under s. 423(1) (b), *infra*.

Chapter XXVII deals with the submission of sentences requiring confirmation.

**Case.**—The accused were convicted of rioting. That was the only charge before the Magistrate. On appeal the Sessions Judge acquitted them of rioting, but convicted them under ss. 448 and 323 of the Penal Code of house-trespass and hurt. It was held that the convictions by the Sessions Judge should be set aside, that the offences were distinct and separate offences, which should have formed the subject of separate charges, and that the accused had been prejudiced by the omission of those charges.<sup>1</sup>

### *Joinder of charges.*

233. For every distinct offence of which any person is accused<sup>1</sup> there shall be a separate charge,<sup>2</sup> and every such charge shall be tried separately,<sup>3</sup> except in the cases mentioned in sections 234, 235, 236 and 239.

#### ILLUSTRATION.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

**COMMENT.**—This section provides, first, that there should be a separate charge for each distinct offence; and, secondly, that there should be a separate trial for every such charge, except in the four cases mentioned in the section, viz. ss. 234, 235, 236 and 239. Unless, therefore, a case falls within any of these four sections, it would be a breach of this section to join a number of charges in the same trial. Such a trial is illegal as the illegality goes to the root of the trial.

Sections 233 to 238 provide for joinder of charges in one trial of the same accused person. Section 239 deals with joinder of charges against two or more accused in the same trial.

**Object.**—The object of this section is to see that the accused is not bewildered in his defence by having to meet several charges in no way connected with one another.<sup>4</sup> The mind of the Court might be prejudiced against the accused if he were tried in one trial upon different charges resting on different evidence.<sup>5</sup>

**Scope.**—This section applies to summons-cases also although it is not necessary to embody a charge in writing in a summons-case.<sup>6</sup>

1. 'For every distinct offence of which any person is accused.'—When two offences have been committed and they have no connection with each other, they are distinct offences within the meaning of this section.<sup>7</sup>

The inclusion in one charge of several distinct offences is an illegality and the conviction on such a charge must be set aside.<sup>8</sup> Thefts of different items of orna-

<sup>1</sup> *Yakub Ali v. Lethu Thakur*, (1902) 30 Cal. 288.

<sup>2</sup> *Fakirapa*, (1890) 15 Bom. 491.

<sup>3</sup> *Juala Prasad*, (1884) 7 All. 174, 177, F.B.

<sup>4</sup> *San Dun*, (1905) 3 L. B. R. 52,

F.B.; *Upendra Nath Biswas*, (1913) 41 Cal. 694.

<sup>5</sup> *Ram Subheg Singh*, (1915) 19 C. W. N. 972.

<sup>6</sup> *Asgar Ali Biswas*, (1913) 40 Cal. 846.

ments from a safe deposit vault committed at different times cannot be lumped up into one charge.<sup>1</sup>

2. 'There shall be a separate charge.'—This section is mandatory, and for every distinct offence, there should be a separate charge which should, except in certain cases specified in ss. 234, 235, 236 and 289 of the Code, be tried separately.<sup>2</sup> The accused were convicted of rioting, which was the only charge before the Magistrate. On appeal the Sessions Judge acquitted them of rioting, but convicted them under ss. 448 and 323 of the Penal Code of house-trespass and hurt. It was held that the conviction was illegal as the offences were distinct and separate offences, which should have formed the subject of separate charges.<sup>3</sup>

When a case is being tried as a warrant-case, and a charge is drawn up of an offence which is triable as a warrant-case, and it is intended to proceed against the accused also for an offence which is triable only as a summons-case, that offence should form part of the charge. Where an accused person was summoned for offences under ss. 143 (unlawful assembly) and s. 379 (theft) of the Penal Code and the trying Magistrate drew up a charge only for the offence under s. 379, but convicted the accused only for the offence under s. 143 of the Code, it was held that the offence under s. 143 should have formed part of the charge, and that the accused was misled in his defence by the absence of such a charge.<sup>4</sup>

The Privy Council held in *Subramania Iyer's case*,<sup>5</sup> in which the provisions of this section and s. 234 were contravened, that any disregard of an express provision of law as to the mode of trial was not a mere irregularity such as could be remedied by s. 537. But in view of the Privy Council decision in *Abdul Rahman v. The King-Emperor*,<sup>6</sup> *Subramania Iyer's case* can no longer be regarded as an authority for the proposition that any misjoinder of charges necessarily vitiates the trial, irrespective of the question whether the accused has been damnified thereby.<sup>7</sup>

The Madras High Court has held that *Subramania Iyer's case* cannot be extended to preliminary inquiries held by Magistrates committing a case to the Sessions Court so as to render the commitment itself illegal because there was misjoinder of offences or offenders at the preliminary inquiry. In such a case the Sessions Judge, if he considers it necessary, can frame charges against and try the accused separately.<sup>8</sup>

**Alternative charge.**—The accused should never be called on to plead in the alternative but separately to each of the heads of a charge. An alternative charge is forbidden by this section.<sup>9</sup> But at the same trial the accused can be charged with murder, and in the alternative with the offence of causing evidence to disappear with the intention of screening the offender.<sup>10</sup>

3. 'Every such charge shall be tried separately.'—Each offence should form a separate head of charge, with reference to which there should be a distinct finding and a distinct sentence. The trial of each of the charges should be separate. Separate offences should not be lumped together in one single charge.<sup>11</sup>

<sup>1</sup> *Becha Ram Mukherji*, [1944] 1 Cal. 398.

<sup>2</sup> *Sita Ahir*, (1912) 40 Cal. 168.

<sup>3</sup> *Yakub Ali v. Lethu Thakur*, (1902) 30 Cal. 288.

<sup>4</sup> *Hossein Sardar v. Kalu Sardar*, (1902) 29 Cal. 481.

<sup>5</sup> (1901) 28 I. A. 257, 25 Mad. 61, 3 Bom. L. R. 540.

<sup>6</sup> (1926) 54 I. A. 96, 29 Bom. L. R. 818, 5 Ran. 58.

<sup>7</sup> Per Broomfield, J., in *Baburao Tatyarao*, (1936) 38 Bom. L. R. 946,

[1937] Bom. 981. See also *Ramaraja Tevan*, (1930) 58 Mad. 937.

<sup>8</sup> *Govindu*, (1902) 26 Mad. 592.

<sup>9</sup> *Ramji Sajabarao*, (1885) 10 Bom. 124. See *Fakirapa*, (1890) 15 Bom. 491; *Bankatram*, (1904) 28 Bom. 538, 6 Bom. L. R. 379; *Palani Palagan*, (1902) 26 Mad. 55.

<sup>10</sup> *Hanmappa*, (1923) 25 Bom. L. R. 231.

<sup>11</sup> *Sheo Churun*, (1871) 3 N. W. P. H. C. R. 314; *Becha Ram Mukherji*, [1944] 1 Cal. 398.



**234. (1)** When a person is accused of more offences than one of the same kind<sup>1</sup> committed within the space of twelve months<sup>2</sup> from the first to the last of such offences, whether in respect of the same person or not<sup>3</sup>, he may be charged with, and tried at one trial for, any number of them not exceeding three.

**(2)** Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law :

Provided that, for the purpose of this section, an offence punishable under section 379 of the Indian Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Indian Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

**COMMENT.**—This section modifies s. 233 by allowing three charges of three offences of the same kind committed within one year to be tried together. It limits the number of charges of the same kind which may be tried in a single trial. The accused may be tried separately for other offences. The Privy Council has ruled that it is illegal under this section to charge a person at one trial with more than three acts, these acts extending over a period of more than a year. In this case the accused was tried on charges of extortion in which forty-one criminal acts extending over a period of two years were brought against him. It was held that the trial so conducted was plainly prohibited and was illegal and could not be cured by s. 537.<sup>1</sup>

The Legislature in framing this section contemplated a joint trial for three separate offences only when the offences were essentially of a simple kind and did not require the framing of a multitude of different charges.<sup>2</sup>

**Scope.**—This section does not say that a trial must be limited to three charges ; it says it must be limited to three offences and that the offence must be of the same kind. The same offence may be charged under different sections of the Penal Code and any number of charges can be tried in one and the same trial.<sup>3</sup>

**1.** 'When a person is accused of more offences than one of the same kind.'—This section by its terms refers to the case of a single accused, and is not applicable where several persons are tried jointly.<sup>4</sup> The expression "offences of the same kind" is explained in sub-section (2).<sup>5</sup> Embezzlement and abetment thereof are not offences of the same kind.<sup>6</sup>

**Cases.**—**Criminal breach of trust and falsification of accounts.**—The accused was charged at one trial with criminal breach of trust with respect to seventeen sums of money, and also with falsifying account-books of Government regarding several items. It was held that the trial involved misjoinder of charges in contravention of the provisions of this section, as the two offences combined were not of the same kind.<sup>7</sup> A trial of an accused person on three charges of breach of trust

<sup>1</sup> *Subramania Iyer*, (1901) 28 I. A. 257, 3 Bom. L. R. 540, 25 Mad. 61.

<sup>2</sup> *Hugh Frances Bellgard*, [1941] 2 Cal. 819.

<sup>3</sup> *Tribhuvandas*, (1906) 10 Bom. L. R. 601, 38 Bom. 77.

<sup>4</sup> *Budhai Sheikh*, (1905) 33 Cal.

292; *Abdul Majid*, (1906) 33 Cal. 1256; *Tulsi*, (1916) P. R. No. 17 of 1917.

<sup>5</sup> *Jandumar Das*, (1929) 51 All. 544.

<sup>6</sup> *Nathalal*, (1902) 4 Bom. L. R. 433 ;

*Manaji K. Mehia*, (1925) 27 Bom. L. R. 1843, 49 Bom. 892. f

and three charges of falsification of accounts in connection therewith was held to be illegal.<sup>1</sup>

**Criminal misappropriation and forgery.**—An accused person was charged with, and tried for, first, three separate acts of criminal misappropriation committed within a year, and, secondly, two separate offences of forgery with intent to conceal two of such acts of criminal misappropriation. It was held that this was illegal.<sup>2</sup>

The accused was charged with and tried at one and the same trial for three offences under s. 408, Penal Code, and three offences of forgery under s. 467 of the Code, and was convicted and sentenced in respect of all the six offences. It was held that the trial of any person in respect of six offences at one and the same trial, although they might have been committed within the space of twelve months, was illegal.<sup>3</sup>

**Falsification of accounts.**—Where the offence amounts to falsification of a book of account, then every act of falsification would amount to an offence under this section, and not more than three of such offences can be tried together.<sup>4</sup>

2. 'Committed within the space of twelve months.'—Offences of the same kind committed in the course of one year only can be tried at one trial.<sup>5</sup> Where the accused was charged with having altered and mutilated certain accounts between the years 1907 and 1909 it was held that the charge was bad, inasmuch as he could have been tried at one trial only for three separate offences committed within the space of twelve months from first to last.<sup>6</sup>

3. 'Whether in respect of the same person or not.'—An accused person may be charged at one trial with three offences of the same kind though committed against different persons.

Where a postmaster was accused of having, on three different occasions within a year, dishonestly misappropriated moneys paid to him by different persons for money orders, it was held that he could be charged with, and tried at one trial for, all three offences.<sup>7</sup>

4. 'May be charged with, and tried at one trial for, any number of them not exceeding three.'—This section simply places a statutory limit on the number of charges which may legally form part of a single trial. There is nothing in the section, however, to prevent an accused from being separately charged with and tried on the same day for any number of distinct offences of the same kind committed within a year.<sup>8</sup>

**Cases.**—The accused was charged under s. 124A, Penal Code, in respect of one article, and separately charged under ss. 124A and 158A, Penal Code, in respect of another article published within a year of the former. It was held that he could be tried at one trial on both the charges.<sup>9</sup> Where an accused person is charged with having misappropriated or committed criminal breach of trust in respect of an aggregate sum of money, the whole sum being alleged to have been wrongfully dealt with by the accused within a period not exceeding one year, the mere fact that the items composing such aggregate sum are specified and may be more than three in

*Bhu Prakash*, [1941] All. 36. \*

*Mata Prasad*, (1908) 30 All. 351.

*Sheo Saran Lal*, (1910) 32 All. 219.

*Mati Lal Lahiri*, (1899) 26 Cal.

560 *Nathalal*, (1902) 4 Bom. L. R. 483.

\* See *Hanmant*, (1877) 4 Bom.

610; *Raman Lal*, (1926) 49 All. 312.

\* *Sakim-ullah Khan*, (1905) 32 All.

57; *Dhanjibhoy v. Kaim Khan*, (1904) P. R. No. 14 of 1905.

\* *Juala Prasad*, (1884) 7 All. 174, F.B.

\* *Ram Manikya Chakrabutty v. Dononjoy Baraj*, (1878) 3 Cal. 540.

\* *Bal Gangadhar Tilak*, (1906) 33 Bom. 221, 10 Bom. L. R. 973.

number will not render the charge obnoxious to the prohibition implied by this section.<sup>1</sup>

**Sub-section (2).**—This sub-section explains the meaning of the expression “offences of the same kind” used in sub-section (1). Offences not punishable under the same section of the Penal Code or any special or local law are not of the same kind.

**Proviso.**—Sections 379 and 380, Indian Penal Code, refer to theft and theft in a building and are deemed to be offences of the same kind. Similarly, it is provided specifically that an attempt to commit an offence, where such an attempt is penalised by any law, is of the same kind as the actual offence.<sup>2</sup>

**235. (1)** If, in one series of acts so connected together as to form the same transaction,<sup>1</sup> more offences than one are committed by the same person,<sup>2</sup> he may be charged with, and tried at one trial for, every such offence.<sup>3</sup>

**(2)** If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

**(3)** If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

**(4)** Nothing contained in this section shall affect the Indian Penal Code, section 71.

#### ILLUSTRATIONS.

*to sub-section (1)—*

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 383 of the Indian Penal Code.

(b) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also

<sup>1</sup> *Gulzari Lal*, (1902) 24 All. 254.

<sup>2</sup> Report of the Select Committee.

falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(f) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(g) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code.

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in illustrations (a) to (h) respectively may be tried at the same time.

*to sub-section (2)—*

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(j) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

*to sub-section (3)—*

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 304 of the Indian Penal Code.

**COMMENT.**—This section relates to the joinder of charges of offences committed by the same person. It applies to a case in which the different offences are parts of one transaction. The combined effect of this section and s. 71 of the Penal Code is given in the authors' commentary on the Indian Penal Code.

• Sections 235 and 239, which deal with the joinder of charges of different offences and the joint trial of a number of accused persons, are not controlled by the latter part of s. 238 or by s. 234. If offences are committed in the course of the same transaction, they may be tried together, although they are more than three in number and extending over a period of more than a year. There is nothing in this section or s. 239 to suggest that they are not governed by s. 222 or the first part of s. 238. The illustrations to this section make it clear that when different offences are tried together, they must be separately charged.<sup>1</sup>

<sup>1</sup> *Karamalli Gulamalli*, (1938) 40 Bom. L. R. 1092, [1939] Bom. 42.

**Scope.**—This section allows a number of offences, even when exceeding three and extending over a period of more than twelve months, being tried at one trial if they are committed in one series of acts so connected together as to form the same transaction.<sup>1</sup>

1. 'One series of acts so connected together as to form the same transaction.'—The word 'transaction' means a group of facts so connected together as to involve certain ideas, viz. unity, continuity and connection. In order to determine whether a group of facts constitutes one transaction, it is necessary to ascertain whether they are so connected together as to constitute a whole which can properly be described as a transaction.<sup>2</sup> The real and substantial test by which to determine whether several offences are so connected as to form the same transaction depends on whether they are so related to one another in point of purpose, or as cause and effect, or as principal and subsidiary acts as to constitute one continuous action. The fact that offences are committed at different times does not necessarily show that they may not be so connected as to fall within this section. Proximity of time, unity or proximity of place, continuity of action, community of purpose or design are elements for consideration, whether the alleged facts form the same transaction.<sup>3</sup> But in all such cases, it should be considered whether the alleged acts were, as a matter of fact, so connected in one series as to form essentially and strictly the same transaction.<sup>4</sup> "Transaction" means "carrying through" and suggests not necessarily proximity in time—so much as continuity of action and purpose.<sup>5</sup> The Privy Council has held that identity of time is not an essential element in determining whether certain events form the same transaction within the meaning of this section. It is the continuity of action and the sameness of purpose that determine whether the events constitute the same transaction.<sup>6</sup> The word "transaction" has a synonym in the word "affair." If a man is found in concealed possession of a diamond necklace of which each individual diamond has been the subject of a separate theft and he knows that the diamonds have been stolen, his dishonest possession of the necklace is one 'transaction' in the sense that that word is used in this section. Similarly the simultaneous possession of a number of bullocks at a fair and the offer of them for sale is one 'transaction' and any number of separately stolen bullocks may be the subject of a single trial.<sup>7</sup> If a quantity of stolen property is found in the possession of an individual in circumstances which lead to the conclusion that he was retaining the whole of such property knowing it to have been stolen there cannot be separate trials in respect of separate portions of the stolen property. If, however, the articles were proved to have been received on different dates it would justify separate charges limited to three in respect of each act of reception. It does not follow from the mere fact that the several articles were stolen on different dates and that there is no evidence of separate acts of reception, that the retention of each article on a given date is not a part of a single 'transaction.'<sup>8</sup>

<sup>1</sup> *Choragudi Venkataadri*, (1910) 33 Mad. 502.

<sup>2</sup> *Kashiram Jhunjhunwalla*, (1935) 62 Cal. 808.

<sup>3</sup> *Vajiram*, (1892) 16 Bom. 414, 424; *Amrita Lal Hazra*, (1915) 42 Cal. 957; *Kamala Kanta Ray Chaudhuri*, [1938] 2 Cal. 98; *Nana*, [1939] Nag. 686.

<sup>4</sup> *Fakirapa*, (1890) 15 Bom. 491.

<sup>5</sup> *Datto Hammar*, (1905) 30 Bom. 49, 7 Bom. L. R. 638; *Mallayya*, (1924) 49 Mad. 74; *Shapurji Sorabji*,

(1935) 33 Bom. L. R. 106, 60 Bom. 148; *Ajablal Rai*, (1935) 15 Pat. 138; *Astell v. Eng Take*, [1941] Ran. 539, differing from *Shapurji Sorabji* on the point that the trial should be set aside because injustice might have occurred.

<sup>6</sup> *Babulal; Sailendra Nath*, (1938) 40 Bom. L. R. 787, 65 I. A. 158, [1938] 2 Cal. 295; *Hriday*, (1945) 24 Pat. 501.

<sup>7</sup> *Raynath Rai*, (1938) 13 Pat. 161.

<sup>8</sup> *Ibid.*, p. 164.

<sup>9</sup> *Ibid.*, pp. 163, 164.

The expression "same transaction" is not applicable to cases in which the alleged offences are separated by distinct intervals of time or place and must be proved by distinct evidence.<sup>1</sup> The area of facts covered by this expression varies with the circumstances of each case. The illustrations make the meaning of the expression very clear.

2. 'More offences than one are committed by the same person.'—The offences may be of the same kind as in ills. (d), (e) and (h) or of different kinds as in (a), (b), (c), (f) and (g). But they must be distinct offences. See s. 71 of the Indian Penal Code.

The Calcutta and the Patna High Courts have held that a charge of criminal breach of trust with regard to a gross sum consisting of seven items can legally be joined at the same trial with two charges of falsification of accounts committed within one and the same year, if the falsification was carried out as one of the series of acts constituting the transaction by which the misappropriation was effected.<sup>2</sup> The Madras and the Bombay High Courts have held to the contrary.<sup>3</sup>

The expression "by the same person" clearly indicates that where there are more accused than one this section is inapplicable. Section 239 will then apply.

3. 'He may be charged with, and tried at one trial for, every such offence.'—The provisions of this section are not imperative but enabling.<sup>4</sup> The accused may be charged with and tried for every distinct offence, but the Court may not impose a sentence for every conviction. It may sentence the accused for the graver offence proved.

If, in any case, either the accused are likely to be bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters, and tending by its mere accumulation to induce an undue suspicion against the accused, then the charges should not be combined.<sup>5</sup>

An accused went to the house of a prostitute in a brothel for the purpose of committing theft. In the course of committing theft he also committed rape upon the prostitute. It was contended that the joinder of the two offences of theft and rape in the same trial constituted misjoinder under this section.<sup>6</sup>

Sub-section (2).—The offences referred to in this sub-section are distinct and separate offences not necessarily connected with one another. See ills. (i), (j) and (k). The sub-section refers to a totality of acts some of which bring the case under one definition of an offence and some under another.<sup>7</sup> Clause (2) of s. 71 of the Indian Penal Code should be read with this. Where the same facts constitute different offences, the accused may be charged with, and tried at one trial for, each of such offences. But only one offence is committed and the punishment must be for the graver offence. The accused cannot be punished for each of the distinct offences.

Sub-section (3).—Several acts, each constituting an offence and in combination constituting a different or a graver offence, may be separately charged. But it is not necessary to do so, *vide* s. 236. The punishment in such cases will be that for the compound or the graver offence. See s. 71, Indian Penal Code.

<sup>1</sup> *Fakirapa*, (1890) 15 Bom. 491.

<sup>2</sup> *Kashiram Jhunjhunwalla*, (1935) 62 Cal. 808; *Ramkishoon Bradsad*, (1933) 18 Pat. 170, dissenting from *Raman Behari Das*, (1918) 41 Cal. 722.

<sup>3</sup> *Kasi Viswathan*, (1907) 30 Mad. 328; *Manant K. Mehta*, (1924) 27 Bom.

L. R. 1943, 49 Bom. 892.

<sup>4</sup> *Ugra*, (1886) Unrep. Cr. C. 307; *Ameruddin*, (1882) 8 Cal. 481.

<sup>5</sup> *Fakirapa*, *sup.*

<sup>6</sup> *Faiz Md.*, [1945] Kar. 100.

<sup>7</sup> *Dagd Dagdy*, (1927) 30 Bom. L. R. 842.

**236.** If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute,<sup>1</sup> the accused may be charged with having committed all or any of such offences,<sup>2</sup> and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.<sup>3</sup>

#### ILLUSTRATIONS.

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

**COMMENT.**—The preceding section referred to the commission of a series of acts, each of which taken separately constitutes a distinct offence. This section provides for cases where it is doubtful what offence has been committed. It applies to cases in which the facts are not doubtful but the application of the law to the facts is doubtful.<sup>1</sup> A Court trying a criminal case may convict of a crime not the subject of the charge provided (a) that the crime of which the accused is found guilty is established by the evidence and (b) that having regard to the information available by the prosecuting authorities, it is doubtful which of one or more offences would be established by the evidence at the trial. If there is any chance of injustice being done or of the accused having been prevented from giving or of his having failed to give evidence material to his defence by reason of the amendment of the charge, the Court should at least make him the offer of a new trial on the charge as amended. It is not always necessary to make such an offer.<sup>2</sup> The illustrations fully explain the meaning of the section.

1. 'Single act or series of acts is of such a nature that it is doubtful which of several offences the facts... will constitute.'—The section applies when it is doubtful of which of the offences charged the accused is guilty. It will apply to a case where on the same facts it is doubtful whether the accused committed an offence only or both that offence and another.<sup>3</sup> The "several offences" referred to are not offences of the same kind, but offences of different kinds arising out of a "single act or set of acts," and committed at one and the same time.<sup>4</sup>

2. 'The accused may be charged with having committed all or any of such offences.'—This section authorizes the Court to frame cumulative charges or charges in the alternative. Where the several acts amount to distinct offences, separate charges should be framed. A person can be charged with murder and in the alternative with the offence of causing evidence to disappear with the intention of screening the offender.<sup>5</sup>

<sup>1</sup> *Abdul Hamid*, (1935) 14 Ran. 24.

<sup>2</sup> *Thakur Shah*, (1943) 23 Pat. 88, 46°  
Bom. L. R. 518, F. C.

<sup>3</sup> *Ganapathi Bhatta*, (1911) 36 Mad.  
308.

<sup>4</sup> *Manu Miya*, (1882) 9 Cal. 371.

<sup>5</sup> *Hannappa Rudrappa*, (1923) 25  
Bom. L. R. 231; *Tepinessa*, (1918)  
46 Cal. 427.

3. 'He may be charged in the alternative with having committed some one of the said offences.'—This section only authorizes a charge in the alternative when it is doubtful which of several offences the facts which can be proved will constitute, and not where there be a doubt as to the facts which constitute one of the elements of the offence.

A charge in the alternative of two different offences under different sections of the Penal Code is bad in law.<sup>1</sup> A person charged with rape on a married woman cannot be alternatively charged with adultery with the same woman and on the same facts, as a complaint for adultery should be actually instituted by the husband.<sup>2</sup> This section cannot be utilized to declare the charge in the alternative of embezzlement and abetment thereof to be one charge; it involves two separate charges.<sup>3</sup>

**Contradictory statements.**—Illustration (b) settles the law which was uncertain in consequence of conflicting case-law. Contradictory statements by a witness which are irreconcilable constitute the offence of intentionally giving false evidence, though it cannot be proved which of the two statements is false.<sup>4</sup> A person may be charged with and convicted of giving false evidence on two statements to two Courts which are contradictory and irreconcilable, although it may not be proved which of those statements is false. Each of those statements should be separately charged and an attempt should be made to prove that one of them is false. A charge in the alternative may be framed to provide against a failure to prove that either of them is false [*vide* Schedule V, Form xxviii (ii) (4)]. Prosecution or conviction in the alternative in regard to contradictory statements is justifiable only when the prosecution is unable to prove which of the contradictory statements is false.

237. (1) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section,<sup>1</sup> he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

(2) [*Repealed by Act XVIII of 1923, s. 63.*]

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ILLUSTRATION.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

**COMMENT.**—This section empowers the Court to convict the accused of an offence for which no charge has been framed but for which a charge might have been framed under s. 236; so that for want of a specific charge there should not be a failure of justice.

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See s. 232, *supra*, which provides for the course which a Court of appeal or revision should take when a person has been convicted without any charge or on an erroneous charge.

1. 'Offence for which he might have been charged under the provisions of that section.'—A man may be convicted of an offence, although there has been no charge in respect of it, if the evidence is such as to establish a charge that might

<sup>1</sup> *Ramji Sajabarao*, (1885) 10 Bom. 124.

<sup>2</sup> *Kallu*, (1882) 5 All. 233.

<sup>3</sup> *Janeshar Das*, (1929) 51 All. 454.

<sup>4</sup> *G. I.*, 1907, part V, p. 367.



have been made. Five persons were charged under s. 302, Penal Code, with murder, and two of them were convicted. The evidence established that the other three had assisted to remove the body, knowing that a murder had been committed. Without any further charge being made, they were convicted under s. 201 of causing the disappearance of evidence. It was held that the conviction without a further charge being made was warranted by this section.<sup>1</sup> If the accused could not have been charged for the offence which he is shown to have committed under the provisions of s. 236 then this section cannot apply. This section must be read with s. 236. If the facts of the case do not fall under s. 236, this section has no application.<sup>2</sup> Offences charged and offences shown to have been committed must be cognate offences, e.g. criminal breach of trust and attempt to cheat.<sup>3</sup> The Calcutta and the Nagpur High Courts have held that a person can be convicted for abetment of theft when he is charged only with the substantive offence of theft.<sup>4</sup> The Nagpur High Court has, however, held that he cannot be convicted of abetment if the evidence adduced in support of the charge for the substantive offence does not give notice to the accused of all the facts which constitute abetment.<sup>5</sup> The Allahabad, the Bombay and the Madras High Courts have held to the contrary.<sup>6</sup>

238. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence,<sup>1</sup> and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(2A) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(3) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

#### ILLUSTRATIONS.

(a) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b) A is charged, under section 325 of the Indian Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

<sup>1</sup> *Begu*, (1925) 52 I. A. 191, 6 Lah. 226, 27 Bom. L. R. 707. The Calcutta High Court doubts the correctness of this decision in *Istahar Khondkar*, (1935) 62 Cal. 956.

<sup>2</sup> *Harun Rashid*, (1925) 53 Cal. 466.

<sup>3</sup> *Ramajirav Jibajirav*, (1875) 12 B. H. C. R. 1.

<sup>4</sup> *Debiprasad Kalowar*, (1932) 59

Cal. 1102; *Provincial Government, Central Provinces and Berar v. Gomaji*, [1944] Nag. 589.

<sup>5</sup> *Provincial Government, Central Provinces and Berar v. Gomaji*, *ibid.*

<sup>6</sup> *Mahabir Prasad* (1926) 49 All. 120; *Raghya*, (1924) 26 Bom. L. R. 323; *Padmanabha Panjikannaya*, (1909) 33 Mad. 264.

**COMMENT.**—This section applies to cases in which the charge is of an offence which consists of several particulars, a combination of some only of which constitutes a complete minor offence. The graver charge in such cases gives to the accused notice of all the circumstances going to constitute the minor one of which he may be convicted. The latter is arrived at by mere subtraction from the former. But when this is not the case, where the circumstances, embodied in the major charge, do not necessarily, and according to the definition of the offence, imputed by that charge, constitute the minor offence also, the principle no longer applies, because notice of the former does not necessarily involve notice of all that constitutes the latter. The section is not intended to apply to a collateral offence.<sup>1</sup>

1. 'A combination of some only of which constitutes a complete minor offence.'—Some of the acts which are a component part of the original charge must constitute a minor offence. The Court can then convict the accused of the minor offence even though he is not charged with it. But the Court must see that the accused is not prejudiced thereby. In determining the question of prejudice, the nature of the case made at the trial, the evidence given, and the line of defence of the accused, are matters to be taken into consideration.<sup>2</sup>

'Minor offence.'—The words "minor offence" have not been defined by law; they are to be taken, not in any technical sense, but in their ordinary sense.<sup>3</sup> Under this section the Court can convict a person of a minor offence although he was charged with a major offence; but it does not enable a Court to convict him of a major offence, when he is charged with a minor offence.<sup>4</sup>

An offence under s. 365, Penal Code (abducting a woman for wrongful confinement), is a minor offence as compared with offences under ss. 366 (abducting a woman for illicit intercourse) and 376 (rape).<sup>5</sup> An offence under s. 456 (lurking house-trespass) is a minor offence as compared with an offence under s. 457 (lurking house-trespass to commit theft).<sup>6</sup> A person charged with an offence under s. 304 (culpable homicide) or with one under s. 325 (grievous hurt) may be convicted of an offence under s. 323 (hurt).<sup>7</sup>

**Power of jury to return finding on minor offence.**—This section invests a jury trying an offence triable by a jury, with authority to find, as an incident to such trial, that certain facts only are proved at the trial, which facts constitute a minor offence, and return a verdict of guilty of such offence though such minor offence be not triable by a jury; and a Sessions Judge may thereupon record judgment convicting the accused of such minor offence although he is not charged with it.<sup>8</sup>

On the trial of an accused by a Sessions Judge with the aid of assessors for an offence so triable, it is competent to the Judge to convict the accused of a minor offence, though the minor offence is triable only by a jury.<sup>9</sup> Where an accused is tried by a jury for an offence under s. 412, Penal Code, it is competent to convict him for an offence under s. 411 (which is triable by assessors) even though no separate charge under s. 411 has been framed at the trial.<sup>10</sup>

<sup>1</sup> Per West, J., in *Chand Nur*, (1874) 11 B. H. C. R. 240.

<sup>2</sup> *Karali Prasad Guru*, (1916) 44 Cal. 358.

<sup>3</sup> *Sitanath Mandal*, (1895) 22 Cal. 1906.

<sup>4</sup> *Durgya*, (1899) 1 Bom. L. R. 518.

<sup>5</sup> *Sitanath Mandal*, sup.

<sup>6</sup> *Karali Prasad Guru*, sup.

<sup>7</sup> *Dasarath Mandal*, (1907) 34 Cal. 325.

<sup>8</sup> *Pattikadan Ummaru*, (1902) 26 Mad. 243; *Devji Govindji*, (1895) 20 Bom. 215.

<sup>9</sup> *Changouda*, (1920) 22 Bom. L. R. 1241, 45 Bom. 619.

<sup>10</sup> *Gulabchand Dosaji*, (1925) 27 Bom. L. R. 1416.

**Sub-section (2A).**—A person charged with an offence may be convicted of an attempt to commit that offence although the attempt is not separately charged.

**Sub-section (3).**—A person charged with an offence cannot be convicted of a minor offence which requires a complaint by an aggrieved person.

**What persons may be charged jointly.**      **239.** The following persons may be charged and tried together,<sup>1</sup> namely :—

(a) persons accused of the same offence<sup>2</sup> committed in the course of the same transaction ;

(b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence ;

(c) persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months ;

(d) persons accused of different offences committed in the course of the same transaction ;<sup>3</sup>

(e) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence ;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence ; and

(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence ; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

**COMMENT.**—The foregoing ss. 233 to 238 have provided for joinder of charges against the same accused person in the same trial. This section provides for joinder of charges against more than one accused person in the same trial.

This section is the last exception to s. 233 which lays down the general principle that every offence must be charged and tried separately. This is the only section which authorizes a joint trial of several persons under circumstances specified in the section. Except in cases falling under this section, a joint trial of several accused persons renders the trial invalid.

Clauses (a) to (g) provide for cases in which accused may be charged and tried jointly.

The purpose of the Legislature in laying down various restrictions with regard to charges against a number of persons, or of different charges against the same person, was to avoid embarrassing the accused by a multiplicity of charges or by bringing together evidence relating to a number of accused persons ; and so in cases where mandatory provisions as to the joining of charges are disregarded, it is reasonable to presume that the accused has been prejudiced because his trial has been complicated and his defence therefore rendered more difficult. Where there is a misjoinder of accused persons, there is always a possibility that the Court will be

unconsciously prejudiced by evidence that would be irrelevant if the accused were tried separately. A misjoinder does not always vitiate a trial but a Court should ordinarily presume prejudice until it is quite certain that there could have been none.<sup>1</sup>

Even where s. 235 and this section justify a joinder, it should not be resorted to if there is a risk of embarrassment to the defence, e.g. charges of murder of several persons and of arson must embarrass and bewilder the accused in their defence, and confuse the jury.<sup>2</sup>

1. 'May be charged and tried together.'—This section is only an enabling section and does not trammel the discretion of the Court. The Court has a discretion to proceed jointly or separately against the accused persons. The Court must see that the accused are not prejudiced by the joint trial.

Clause (a).—2. 'Accused of the same offence.'—Persons accused of the same offence committed in the course of the same transaction can be tried under this clause. If different offences are committed in the course of the same transaction, then clause (d) will apply. The words "the same offence" indicate the same physical act of crime. The test is whether the two persons are engaged in one transaction, and to determine that it is necessary to regard the facts from the point of view of those two persons. If they are animated by a common purpose, and there is continuity in their action then surely there is one transaction so far as they are concerned. It may even be that community of purpose is not necessary.<sup>3</sup>

As to the meaning of the expression 'in the course of the same transaction,' see cl. (d).

Cases.—Where certain persons, who were witnesses on the same side, gave false evidence on the same point to the same effect to prove the same fact, it was held that the evidence was given in the same transaction and that their joint trial for perjury was legal.<sup>4</sup> Two sets of accused persons, who were cutting trees in different parts of a forest which had been leased to the complainant, were all tried together, although separate charges were framed against the two sets of accused, and they were convicted. The Courts below did not find that there was an intention or object common to the two sets of accused. It was held that there was a misjoinder of parties; and that the case should be remanded for fresh and separate trials of the two sets of accused.<sup>5</sup>

Clause (b).—A person charged with a substantive offence can be tried jointly with a person accused of abetment, or of an attempt to commit such offence. But abetment must have taken place within the jurisdiction of the Court trying the substantive offence.<sup>6</sup> Where a railway ticket collector handed over two used tickets to another person, instructing him to apply for a refund of the fares covered by the same as unused tickets at the place of issue, and the latter made an application but was discovered in the act, it was held that the joint trial of the ticket collector on charges under ss. 408, 420 and 109 and the other under ss. 420 and 511 of the Penal Code was legal.<sup>7</sup>

<sup>1</sup> *Moongan v. Roshan Ali Sahib*, [1942] Mad. 322.

<sup>2</sup> *Akimaddin Naskar*, (1924) 52 Cal. 258.

<sup>3</sup> Per Crump, J., in *Sejmal Punamchand*, (1926) 29 Bom. L. R. 170, 171, 51 Bom. 310.

<sup>4</sup> *Rafi-uz-zamdn*, (1925) 48 All. 325;

*Sejmal Punamchand*, (1926) 29 Bom. L. R. 170, 51 Bom. 310.

<sup>5</sup> *Moongan v. Roshan Ali Sahib*, sup.

*Sachidanandam v. Gopala Ayyan-gar*, (1929) 52 Mad. 991

<sup>7</sup> *Kali Das Chukerbutty*, (1911) 38 Cal. 458.

**Clause (c).—**Section 234 provides for the case of a person who is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences. This clause provides for the case where several persons commit several offences of the same kind within a period of twelve months. It is not necessary that all the offences must have been committed in the course of the same transaction. But it is necessary that they should have been committed jointly. If they are independent of one another the accused cannot be tried jointly.

**Clause (d).—3. ‘In the course of the same transaction.’—**Persons accused of different offences committed in the course of the same transaction may be tried jointly.<sup>1</sup> But if the transaction is not the same they cannot be so tried.

The offences charged shall be committed ‘in the course of the same transaction.’ The point of time at which the section requires that condition to be fulfilled is that of the accusation, and not that of the eventual result. It is on the basis of what appears on the face of the accusation that the Court may proceed to charge and try, and it is immaterial that, if the opinion of the Magistrate as to the existence of a same transaction proves to be wrong in law, the prosecution will thereby be enabled at the trial to join separate offences contrary to the terms of ss. 234 and 235. This clause is expressly an exception from s. 233 and enables a plurality of offences to be dealt with in the same trial. But it does not import either expressly or by implication the limitation set out in s. 234, according to which not more than three offences of the same kind committed within the space of twelve months can be tried together, or the limitation contained in s. 235(1), under which more offences than one committed by the same person can only be tried together if they are in one series of acts so connected together as to form the same transaction, in which case there is no specific limit of number. Nor is there any limit of number of offences specified in this clause. The one and only limitation there is that the accusation should be of offences “committed in the course of the same transaction.” Where several persons conspire to commit offences, and commit overt acts in pursuance of the conspiracy (a circumstance which makes the act of one the act of each and all the conspirators), these acts are committed in the course of the same transaction which embraces the conspiracy and the acts done under it. The common concert and agreement which constitute the conspiracy serve to unify the acts done under it. Identity of time is not an essential element in determining whether certain events form the same transaction within the meaning of this section. It is the continuity of action and the sameness of purpose that determine whether the events constitute the same transaction.<sup>2</sup>

Where the accusation against all the accused persons is that they carried out a single scheme by successive acts done at intervals, and there was a complete unity of project, and the whole series of acts were so linked together by one motive and design as to constitute one transaction within the meaning of this section, a joint trial is not only legal but is demanded in the interest of public time and convenience. The foundation for the procedure is the association of two or more persons concurring from start to finish to attain the same end.<sup>3</sup>

<sup>1</sup> *Deputy Legal Remembrancer v. Kallash Chandra Ghose*, (1914) 42 Cal. 760.

<sup>2</sup> *Babulal : Sailendra Nath*, (1938) 40 Bom. L. R. 787, 65 I.A. 158, [1938] 42 Cal. 295; *Chhoteymian*, [1937] Nag. 165.

<sup>3</sup> *Ganesh Narayan*, (1912) 14 Bom. L. R. 972; *Kushai Malik*, (1928) 50 Cal. 1004, 1009; *Datto Hanmant*, (1905) 7 Bom. L. R. 683, 30 Bom. 49; *Gopal Raghunath*, (1928) 31 Bom. L. R. 148, 53 Bom. 344.

A fight between two parties cannot be treated as a "transaction" within the meaning of this section. The two parties cannot regularly be charged in the same trial.<sup>1</sup>

**Security proceedings.**—The provisions of this section read with s. 117 are applicable where several persons are required to furnish security for keeping the peace under s. 107. A joint inquiry in the case of such persons is therefore not *ipso facto* illegal.<sup>2</sup> The main principles applicable to a criminal trial regarding joinder of charges and the joint trial of accused persons should be applied to inquiries under s. 107.<sup>3</sup>

**Cases.**—**Offences committed in course of same transaction.**—A person who commits criminal breach of trust can be tried jointly with the person who receives the property obtained by the breach of trust.<sup>4</sup> The person who acts as an agent to receive a bribe on behalf of another and the person who accepts it can be tried jointly, because it is the 'same transaction.' The one obtains and the other receives.<sup>5</sup> Where the accused were all alleged to have been members of a secret society, and to have joined in the unlawful enterprise and with others, known and unknown, to have conspired to wage war or to deprive the King of the sovereignty of British India, and to have collected arms and ammunition with such intent and to have actually waged war, it was held that the joint trial of the accused on charges under ss. 121, 121A, 122 and 123 of the Penal Code was not bad for misjoinder of persons or charges.<sup>6</sup> The printer and the publisher of a seditious pamphlet can be tried jointly, because they are concerned in the same transaction in regard to the publication of the pamphlet.<sup>7</sup>

**Offences not committed in course of same transaction.**—Five persons were charged with having committed the offence of rioting on December 5; four out of those persons, and one F, were charged with having committed the offence of criminal trespass on December 9. These two cases were tried together in one trial. It was held that the trial was illegal.<sup>8</sup>

The accused entered upon a plot of land belonging to the complainant and looted his linseed crop, and on the following day they entered upon another plot and looted his tobacco. All of them were tried jointly, and convicted under ss. 148 and 379 of the Penal Code in respect of each occurrence. It was held that the events of the two different days were not parts of the same transaction, and that the trial was bad.<sup>9</sup> Where one accused was charged with having misappropriated certain sums of money, another accused with having misappropriated part only of the same monies, each act of misappropriation being complete in itself, and the third accused was charged with having abetted the two, it was held that they could not be tried together.<sup>10</sup>

**Clause (e).**—When one person is accused of an offence which includes theft, extortion, or criminal misappropriation, and another of receiving or retaining or disposing of the stolen property, they may be tried jointly.<sup>11</sup> The thief and the re-

<sup>1</sup> *Chandra Bhutya*, (1892) 20 Cal. 587.

<sup>37</sup> Cal. 467.

<sup>2</sup> *Abdul Kadir*, (1886) 9 All. 452; *Nathu*, (1884) 6 All. 214.

<sup>7</sup> *Shantaram Mirajkar*, (1927) 30 Bom. L. R. 320.

<sup>3</sup> *Bachu Mullah v. Sia Ram Singh*, (1886) 14 Cal. 358.

<sup>8</sup> *Chandi Singh*, (1887) 14 Cal. 395; *Gobind Koeri*, (1902) 29 Cal. 385.

<sup>4</sup> *Balabhat*, (1904) 6 Bom. L. R. 517.

<sup>9</sup> *Budhai Sheikh*, (1905) 33 Cal. 292.

<sup>5</sup> *Shrinivas*, (1905) 7 Bom. L. R. 687.

<sup>10</sup> *K. Meeriah*, (1930) 8 Ran. 682.

<sup>6</sup> *Barindra Kumar Ghose*, (1909)

<sup>11</sup> The decisions to the contrary are no longer of any authority.

ceiver of the stolen property may be jointly tried.<sup>1</sup> Dacoity and receiving stolen property in the commission of the dacoity may be tried together.<sup>2</sup> Under cls. (a) and (e), three persons jointly committing thefts on two different occasions within a period of twelve months can be tried at the same trial. Under cl. (e) joint trial would also be legal if two of them were charged with theft under s. 380 of the Indian Penal Code and one under s. 411 for each of these occurrences.<sup>3</sup>

Two bicycles were stolen from different places, and in each case one A, an employee of R who kept a bicycle shop, was seen loitering in the neighbourhood about the time when the bicycles disappeared. Parts of each of the stolen bicycles were afterwards found, some in the shop of R and some in the house of one N. It was held that the joint trial of three persons for offences under ss. 379 and 411 of the Penal Code was not illegal.<sup>4</sup>

Clause (f).—Persons accused of offences under ss. 411 and 414 of the Penal Code in respect of stolen property the possession of which has been transferred by one offence may be tried together.<sup>5</sup> The expression “possession of which has been transferred by one offence” refers to the original theft of the stolen property.<sup>6</sup> Where several articles stolen at one theft are received by different persons, all or any of the receivers are triable jointly for the offence of receiving stolen property.<sup>7</sup> If more than one offence of theft has been committed in respect of certain property, then the persons in possession of such stolen property which has been secured by means of the commission of several offences of theft or robbery, etc., cannot be tried jointly.<sup>8</sup>

Clause (g).—This clause provides for the joint trial of offences under Chapter XII of the Penal Code relating to the same coin and abetment of or attempt to commit any such offence.

240. When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

COMMENT.—This section applies where a person is accused of several offences, or where there are charges of several distinct offences.

<sup>1</sup> *Bhima*, (1916) 38 All. 311; *Nawab*, (1936) 18 Lah. 62.

<sup>2</sup> *Durga Prasad*, (1922) 45 All. 228.

<sup>3</sup> *Superintendent and Remembrancer of Legal Affairs, Bengal v. Raghukul Brahmin*, (1935) 62 Cal. 946.

<sup>4</sup> *Anwar*, (1921) 44 All. 276.

<sup>5</sup> *Keshav Krishna*, (1904) 6 Bom.

L. R. 361. The decisions to the contrary are no longer of any authority.

<sup>6</sup> *Lakha Amra*, (1981) 84 Bom. L. R. 301.

<sup>7</sup> *Musammal Guljania*, (1927) 6 Pat. 588.

<sup>8</sup> *Bhagga*, (1935) 11 Luck. 70.

## CHAPTER XX.

## OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in 241. The following procedure shall be observed  
summons-cases. by Magistrates in the trial of summons-cases.

**COMMENT.**—The 'trial' of a criminal case means the proceeding which commences when the case is called on with the Magistrate on the bench, the accused in the dock, and the representatives of the prosecution and defence, if the accused be defended, present in Court for the hearing of the case.<sup>1</sup> Chapter XX deals with the trial of summons-cases: Chapter XXI, with warrant-cases. As to a "summons-case," see s. 4, cl. (v), *supra*. There is no provision in either Chapter to authorize the Magistrate to try any case except under the Chapter applicable to the particular case; that is, a warrant-case cannot be tried under Chapter XX, or a summons-case under Chapter XXI. If the warrant-case is not proved, the Magistrate may proceed with the summons-case according to the procedure laid down in this Chapter.<sup>2</sup>

A summons-case is generally the result of a complaint. On a complaint being made the complainant is examined (s. 200) and process issued for the attendance of the accused (s. 204). The procedure at the trial is laid down by this Chapter.

**Summons-case and warrant-case arising out of same transaction.**—In the investigation of a complaint, which forms the subject of two distinct charges arising out of the same transaction, one of which is a summons and the other a warrant-case, the procedure should be that prescribed for warrant-cases.<sup>3</sup> If a Magistrate tries a warrant-case as a summons-case, the procedure is something more than an irregularity, and the conviction will be set aside.<sup>4</sup>

**Commitment.**—Summons-cases cannot be committed to the Court of Session because there is no warrant for such commitment and the Magistrate can adequately punish the offenders. If a committal is made, it can be quashed as illegal.<sup>5</sup>

242. When the accused appears or is brought before the Magistrate, Substance of ac- the particulars of the offence of which he is accused  
cusation to be shall be stated<sup>1</sup> to him, and he shall be asked if he  
stated. has any cause to show why he should not be convicted;  
victed; but it shall not be necessary to frame a formal charge.<sup>2</sup>

**COMMENT.**—This section provides for the procedure when the accused or his pleader (s. 205) appears. Section 247 provides for the course to be adopted if the complainant does not appear.

1. 'The particulars of the offence . . . shall be stated.'—It is necessary that the accused should have a clear statement made to him as to the particulars of the offence of which he is charged.<sup>3</sup> Omission to state the particulars and to question him if he has any cause to show vitiates the trial.<sup>4</sup>

<sup>1</sup> *Dagdu v. Punja*, (1936) 38 Bom. 711.  
L. R. 1189, [1937] Bom. 211.

<sup>2</sup> *Papadu*, (1884) 7 Mad. 454.

<sup>3</sup> *Rajnarain Koonwar v. Lola Tamoli Raut*, (1884) 11 Cal. 91; *Hossein Sardar v. Kahu Sardar*, (1902) 29 Cal. 481; *Sobhanadfi*, (1915) 39 Mad. 508; *Raghavulu Naicker v. Singaram*, (1918) 41 Mad. 727; *Samsudin*, (1890) 22 Bom.

<sup>4</sup> *Chinnapayan*, (1906) 29 Mad. 372.

<sup>5</sup> *Dharam Singh*, (1906) 3 A. L. J. R. 14, 26 A. W. N. 28.

<sup>6</sup> *Acharjee Lall*, (1878) 8 C. L. R. 87.

<sup>7</sup> *Gopal Krishna Saha v. Matilal*, (1926) 54 Cal. 359.



2. 'It shall not be necessary to frame a formal charge.'—In a summons trial there is a charge of an offence, although it is not necessary to embody it in writing in accordance with the provisions of ss. 221-223 of the Code. But the provisions relating to joinder of charges and joint trial apply to the trial of summons-cases.<sup>1</sup>

If a summons-case is tried jointly with a warrant-case, the procedure of the warrant-case is to be followed. A charge will then have to be drawn up for the summons-case also. See Comment on s. 241, *supra*.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

COMMENT.—The Magistrate has the discretion to convict the accused if he pleads guilty. He is not bound to do so if he thinks it is necessary to have evidence of the guilt of the accused. If the accused admits some or all of the facts alleged by the prosecution but pleads "not guilty," the Court is bound to proceed according to law by examining the witnesses for the prosecution and defence.<sup>2</sup>

244. (1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence:<sup>3</sup>

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

COMMENT.—This section lays down the procedure where the accused has not admitted the truth of the accusation or where the Magistrate does not convict the accused under the preceding section.

Sub section (1).—If the accused does not make the admission under s. 243, the Magistrate is bound to hear the complainant and his witnesses; and he is not competent to acquit the accused without examining the complainant and his witnesses.<sup>4</sup>

It is the duty of the prosecution to call all the witnesses who prove their connection with the transaction connected with the prosecution, and who must be able to give important information. If such witnesses are not called without sufficient reason being shown, the Court may properly draw an inference adverse

<sup>1</sup> *San Dun*, (1905) 2 Cr. L. J. 739, 3 L. B. R. 52, F.B.

<sup>2</sup> *Somabhai*, (1907) 9 Bom. L. R. 1346.

<sup>3</sup> *Toulman*, (1891) Unrep. Cr. C.

539, Cr. R. No. 11 of 1891; *Kesri v. Muhammad Baksh*, (1896) 18 All. 221; *Ali Hujain v. Lachmi Narain Mahajan*, (1931) 54 All. 416.

to the prosecution. The only thing that can relieve the prosecutor from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. No such corresponding inference can be drawn against an accused.<sup>1</sup>

1. 'Hear the accused and take all such evidence as he produces in his defence.'—The Magistrate is bound to examine all the witnesses produced by the accused. He has no discretion in the matter. He has no power to limit the number of witnesses. A conviction by the Magistrate who refused to examine a witness formally tendered on behalf of the accused is illegal.<sup>2</sup>

**Proviso.**—This proviso has been added to provide for the case where a complaint has been made by a Court.

**Sub-section (3).**—Where a complainant is required to pay fees for summoning witnesses, and fails to do so, the Magistrate must deal with the case on the evidence before him, and is not justified in dismissing the complaint.<sup>3</sup>

245. (1) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

**COMMENT.**—Under this section there must either be acquittal or conviction.

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this Chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

**COMMENT.**—This section gives a Magistrate discretion to proceed in those cases where the evidence for the prosecution establishes an offence other than that referred to in the complaint or summons. If the Magistrate thinks that an offence different from that referred to in the complaint or the summons is *prima facie* established he must act according to the provisions of s. 242. He must state the particulars of such offence to the accused so that he may be able to make his defence accordingly.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear,<sup>1</sup> the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused,<sup>2</sup> unless for some reason he thinks proper to adjourn the hearing of the case to some other day :

Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.

<sup>1</sup> *Dhunno Kāsi*, (1881) 8 Cal. 121; (1869) 4 Ben. L. R. (Appx.) 77, 12 W. Muhammad Yunus, (1922) 50 Cal. 318. R. (Cr.) 77.

<sup>2</sup> *Mahima Chandra Chatterbutty*, <sup>3</sup> *Korapulu*, (1882) 5 Mad. 160.

**COMMENT.**—This section applies where the complainant does not appear in a summons-case. Section 259 is the corresponding section in a warrant-case.

On default of the complainant's appearance the Magistrate has a discretion either to dismiss the complaint and acquit the accused or to adjourn the hearing.

1. 'The complainant does not appear.'—If the complainant is represented by a pleader [s. 4 (r)] his personal appearance will not be regarded as indispensable. But the appearance of the complainant's pleader is not equivalent to the appearance of the complainant within the meaning of this section.<sup>1</sup> Absence of the complainant on the day fixed for the hearing is a sufficient reason for the dismissal of the complaint.

2. 'The Magistrate shall .... acquit the accused.'—The accused is entitled to be acquitted if the complainant is absent and the Court does not adjourn the hearing of the case. The Magistrate is not bound to wait until the Court is about to close for the day.<sup>2</sup>

Where a complainant was present in the Court of a Magistrate who had previously dealt with the case, under the belief that it would be heard by him, but it was taken up and dismissed by the Chief Presidency Magistrate without the knowledge of the complainant, it was held that the order of acquittal was wrong.<sup>3</sup>

**Revival of complaint after acquittal.**—There is no provision in the Code empowering a Magistrate to revive a case after an order of acquittal under this section.<sup>4</sup> An acquittal owing to the absence of the complainant bars a subsequent trial of the accused for the same offence.<sup>5</sup> Even where a case is disposed of owing to the absence of the complainant and the accused, further proceedings are barred. The provision in s. 403 that a fresh trial will not be barred unless the accused has in the first case been "tried" does not limit the effect of an order of acquittal under this section.<sup>6</sup>

An acquittal on a date not fixed for hearing or when the complainant had no notice of the adjourned date is a nullity and does not bar further proceedings. But the order of acquittal should be set aside before the case can proceed.<sup>7</sup>

248. If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint,<sup>8</sup> the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.<sup>9</sup>

**COMMENT.**—This section applies to summons-cases.<sup>10</sup> It is discretionary with the Magistrate to permit the complainant to withdraw his complaint or not.

Where the offence charged is a "warrant" and not a "summons" case, a Magistrate ought to proceed with the inquiry or trial in spite of the withdrawal

<sup>1</sup> *Ponnaganti Kotayyan*, (1903) 2 Weir 309.

<sup>2</sup> *Kuttiyali v. Pari Makri*, (1884) 7 Mad. 356.

<sup>3</sup> *Good v. Gunpat Rai*, (1919) 47 Cal. 147.

<sup>4</sup> *Ram Coomar v. Ramjee*, (1898) 4 C. W. N. 26.

<sup>5</sup> *Bhupatibhooshan Mukherji v. Amiyabhooshan Mukherjee*, (1935) 62 Cal. 1119.

<sup>6</sup> *Guggilapu Paddaya of Palakst*, (1910) 34 Mad. 253; *Dulla*, (1922) 45 All. 58; *Dudekula Lal Sahib*, (1917) 40 Mad. 876.

<sup>7</sup> *Bhupatibhooshan Mukherjee v. Amiyabhooshan Mukherjee*, (1935) 62 Cal. 1119.

<sup>8</sup> *Ganesh Narayan Sathe*, (1889) 13 Bom. 600; *Murray*, (1898) 21 Cal. 103; *Kanchhod Bawla*, (1912) 37 Bom. 369, 15 Bom. L. R. 61.

of the complainant, if he finds the elements of an offence on the facts set forth in the complaint.<sup>1</sup>

1. 'If a complainant .... satisfies the Magistrate .... there are sufficient grounds .... to withdraw his complaint.'—This section is intended to apply to cases instituted upon "complaint."<sup>2</sup> The next section applies to cases instituted otherwise than upon "complaint."

A case is withdrawn under this section without the consent of the accused. A case is compromised if with the consent of the accused it is withdrawn.

"Compromise" is a word which in itself contemplates an arrangement to which there are two parties. "Withdrawal" has no such meaning.<sup>3</sup> See Comment on s 345, *infra*.

2. 'Shall thereupon acquit the accused.'—The Magistrate acquitting the accused must be competent to deal with the case, otherwise the acquittal will not bar a fresh trial.<sup>4</sup>

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

COMMENT.—This section applies to cases instituted otherwise than upon complaint. An order under this section does not amount to an acquittal or to a discharge. The stopping of proceedings under this section is not an acquittal in bar of further proceedings (s. 408, Expln.)

*Frivolous Accusations in Summons and Warrant Cases.*

250. (1) If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate,<sup>1</sup> False, frivolous or vexatious accusations. one or more persons<sup>2</sup> is or are accused before a Magistrate of any offence triable by a Magistrate,<sup>3</sup> and the Magistrate by whom the case is heard discharges or acquits<sup>4</sup> all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious,<sup>5</sup> the Magistrate may, by his order of discharge or acquittal,<sup>6</sup> if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation<sup>7</sup> to such accused or to each or any of such accused when there are more than one, or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record<sup>8</sup> and consider any cause which such complainant or informant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one hundred rupees or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

<sup>1</sup> *Ganesh Narayan Sathe*, (1889) 13 Bom. 800.

<sup>2</sup> *Chenchayya*, (1900) 23 Mad. 626.

<sup>3</sup> *Bayan Ali*, (1916) 20 C. W. N. 1209.

<sup>4</sup> *Samsudin*, (1896) 22 Bom. 711.

(2A) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2B) When any person is imprisoned under sub-section (2A), the provisions of sections 68 and 69 of the Indian Penal Code shall, so far as may be, apply.

(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

(5) [*Repealed by Act XVIII of 1923, s. 69.*]

COMMENT.—The Magistrate before taking action under this section has to satisfy himself that the complaint was (1) false, and (2) frivolous or vexatious. He must also decide at the time of acquitting the accused whether he should exercise his powers under this section and not postpone it to a later date.

Object.—The object of the section is not to punish the complainant, but, by a summary order, to award some compensation to the person against whom a frivolous or vexatious accusation is brought, leaving it to him to obtain further redress against the complainant, if he seeks for it by a regular civil suit or criminal prosecution.<sup>1</sup>

Scope.—This section may be applied in summons-cases, whether tried summarily or not.<sup>2</sup> Where a complaint alleges an offence which is exclusively triable by the Court of Session as well as an offence which is triable by a Magistrate, and after inquiry the Magistrate finds that the complaint was not justified, he has power to award compensation under this section in respect of that part of the complaint which he has full power to deal with.<sup>3</sup>

Sub-section (1).—1. 'In any case instituted upon complaint or upon information given to a police-officer or to a Magistrate.'—The operation of this section is restricted to cases instituted by "complaint" as defined in the Code, .

<sup>1</sup> *Beni Madhub Kurmi v. Kumud Kumar Biswas*, (1902) 30 Cal. 123, 128, F.B.

<sup>2</sup> *Begava*, (1887) 11 Mad. 142.

<sup>3</sup> *Maq Chand*, (1944) 20 Luck. 48.

or upon information given to a police-officer or a Magistrate; and consequently it has no application to a case instituted on a police report or on information given by a police-officer.<sup>1</sup>

A case instituted by the police, on a complaint to them, is not instituted "upon complaint," in the sense of this section, and therefore in such a case an order awarding compensation made under it is illegal.<sup>2</sup> But, where a police-officer appears before a Magistrate and makes a formal complaint of a non-cognizable offence, which is found to be false, the Magistrate can order him to pay compensation to the accused.<sup>3</sup>

2. 'One or more persons.'—Where there are more accused than one the Magistrate may award compensation to one or more of them.

3. 'Accused before a Magistrate of any offence triable by a Magistrate.'—The offence may be under the Penal Code or any special or local law.<sup>4</sup> A person must be accused before a Magistrate of an offence triable by a Magistrate. The institution of proceedings under s. 107 is not an accusation of an offence triable by a Magistrate.<sup>5</sup> An order for payment of compensation cannot, therefore, be made against a man who has petitioned a Magistrate to take action under s. 107 of the Code.<sup>6</sup> Similarly, a proceeding to recover legal fare under s. 28 of the Bombay Public Conveyances Act, 1863, is not a complaint for an offence, and even if frivolous or vexatious, no order for compensation can be passed under this section.<sup>7</sup>

A Magistrate has no jurisdiction to award compensation in cases where the offence charged is not triable by him but by a Court of Session.<sup>8</sup> Where a complainant brings joint accusations of both classes of offences and the Magistrate finds both to be false he is competent to award compensation only in respect of offences triable by a Magistrate, and if compensation is awarded for both kinds of offences and it is not possible to apportion the amount so awarded between the two, the order is bad for uncertainty.<sup>9</sup>

The section reserves the power to award compensation to the Magistrate who has heard the case. On setting aside the conviction and sentence against the accused person an appellate Court or a Court acting in revision has no power under this section to make an order awarding compensation to the accused as against the complainant.<sup>10</sup>

4. 'The Magistrate by whom the case is heard discharges or acquits, etc.'—There must be a regular hearing of the case. If a Magistrate without issuing process for the attendance of a person complained against, dismisses the complaint under s. 203, he cannot pass an order for compensation because there is neither an order discharging nor an order acquitting the accused.<sup>11</sup>

<sup>1</sup> *Ramjeevan Koormi v. Durga Charan*, (1894) 21 Cal. 279.

<sup>2</sup> *Ishri v. Bakhshi*, (1888) 6 All. 96; *Sakar Jan Mahomed*, (1897) 22 Bom. 934.

<sup>3</sup> *Sarla*, (1901) 26 Bom. 150, 8 Bom. L. R. 586, F.B.

<sup>4</sup> *Valki Mitha*, (1919) 44 Bom. 463, 22 Bom. L. R. 195.

<sup>5</sup> *Govind Hamant*, (1900) 25 Bom. 48, 2 Bom. L. R. 389.

<sup>6</sup> *Bhaindhachal Prasad Rai v. Lal Bihari Rai*, (1914) 36 All. 382; *Ram Badan v. Janki*, (1923) 45 All. 363; *Natha Singh v. Pala Singh*, (1898) P. R. No. 4 of 1898; *Kaura*, (1902) P. R.

No. 33 of 1902.

<sup>7</sup> *Valki Mitha*, sup.

<sup>8</sup> *Chhaba Dolsang*, (1916) 19 Bom. L. R. 60; *Het Ram v. Ganga Sahai*, (1918) 40 All. 615.

<sup>9</sup> *Amin Lal*, (1930) 11 Lah. 558.

<sup>10</sup> *Mehi Singh v. Mangal Khandu*, (1911) 39 Cal. 157, F.B.; *Balti Pande v. Chittan*, (1906) 28 All. 625; *Chedi*, (1923) 48 All. 80; *Harichand v. Fakir Sadruddin*, (1901) 3 Bom. L. R. 841; *Maung Khin Maung*, [1940] Ran. 502; *Muhammad Alan*, [1940] Kar. 119.

<sup>11</sup> *Bhagwan Singh v. Harmukh*, (1906) 29 All. 137.

There must be a complete discharge or acquittal. The accused was charged under s. 352 and s. 379 of the Penal Code but convicted under s. 352, being discharged under s. 379. The Magistrate ordered the complainant to pay compensation for bringing a frivolous or vexatious charge. The order for paying compensation was set aside on the ground that this section could only operate when there was a complete discharge or acquittal.<sup>1</sup>

If a complaint is withdrawn under s. 248, compensation may be awarded.<sup>2</sup> But where an offence is compounded it is not competent to a Magistrate to award compensation as there is neither a discharge nor an acquittal but only a composition.<sup>3</sup>

5. 'Accusation .... was false and either frivolous or vexatious.'—The accusation must be false and either frivolous or vexatious.

The term "frivolous" indicates that the accusation is of a trivial nature. The term "vexatious" implies that the accusation is one which ought not to have been made in a criminal Court, and which is intended to harass the accused.<sup>4</sup> Where a person starts criminal proceedings, not bona fide but with a view to bring pressure to bear against his opponent in a civil dispute, the trying Magistrate is justified in proceeding against the complainant under this section.<sup>5</sup>

6. 'By his order of discharge or acquittal.'—When a Magistrate thinks it right to award compensation to the accused, he must do so by his order of discharge or acquittal.

7. 'If the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation.'—If the complainant is present in Court the Magistrate must forthwith call upon him to show cause why he should not pay compensation.

**Who is liable as complainant.**—A person includes a juristic person. Where a municipal peon charged the accused under the District Municipal Act and the Magistrate acquitted the accused and ordered the peon to pay compensation to the accused, it was held that though the peon acted under the orders of the executive body of the Municipality he was liable to pay the compensation. An executive body cannot authorize a servant to prefer a wrongful complaint and so screen the complainant from the legal authority.<sup>6</sup> But where the complaint was instituted under the authority of a Judge acting judicially, it was held that the Judge should be regarded as the complainant and he having acted judicially was not liable to any penalty.<sup>7</sup>

**Who is entitled to compensation.**—Compensation is awarded to the person who has suffered from the accusation and not to his relatives.<sup>8</sup>

**Sub-section (2).**—This sub-section empowers a Magistrate, who is not a third class Magistrate, to award compensation not exceeding one hundred rupees. A third class Magistrate cannot award compensation exceeding fifty rupees. The

<sup>1</sup> *Mukti Bewa v. Jhotu Santra*, (1896) 24 Cal. 53.

<sup>2</sup> *Debi Sahai*, (1881) 1 A. W. N. 155.

<sup>3</sup> *Raoji*, (1894) Unrep. Cr. C. 700; *Khushali Ram*, (1888) P. R. No. 19 of 1888; *Sundar Singh*, (1910) P. R. No. 80 of 1910.

<sup>4</sup> *Beni Mahdub Kurmi v. Kumud Kumar Biswas*, (1902) 30 Cal. 123, 127, F.B.

<sup>5</sup> *Dayabhai v. Tanganio*, (1933) 35 Bom. L. R. 484.

<sup>6</sup> *Bhima*, (1886) Unrep. Cr. C. 309, Cr. R. No. 61 of 1886. But see *Revd. H. Corbyn v. Ameer Khan*, (1869) P. R. No. 24 of 1869.

<sup>7</sup> *Keshav Lakshman*, (1876) 1 Bom. 175.

<sup>8</sup> *Abdool Raheem v. Mehrab Shah*, (1866) P. R. No. 39 of 1866.

Magistrate may, in a case where there are more accused than one, award compensation to each of them.

8. 'The Magistrate shall record.'—These words are imperative and require that before making any direction for payment of compensation the Magistrate shall record and consider any objection which the complainant or informant may urge against the making of the direction.<sup>1</sup>

Sub-section (2A).—Under this sub-section the Magistrate may, by the order directing payment of compensation under sub-s. (2), further order that in default of payment, the person ordered to pay compensation shall be imprisoned for a period not exceeding thirty days.

Sub-section (2C).—The person to whom compensation is awarded may obtain further redress against the complainant by a civil suit or criminal prosecution if he desires to do so.

Sub-section (3).—This sub-section means that whenever a complainant has been ordered to pay compensation exceeding fifty rupees, the right of appeal is given whether the compensation has been awarded only to one accused or has to be distributed amongst a number of accused in sums not exceeding rupees fifty.<sup>2</sup> Where the complainant was directed to pay compensation at rupees fifty each to seven accused persons, i.e., rupees three hundred and fifty in all, it was held that an appeal lay to the Sessions Court.<sup>3</sup>

Sub-section (4).—This sub-section provides for the time for payment of compensation where the original case is not appealable. The words "and where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order" provide for cases in which, though there cannot be an appeal, the acquittal or discharge of the person to whom compensation has been awarded may be set aside in revision. The period of one month is given for making application to the Superior Court.

## CHAPTER XXI.

### OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in 251. The following procedure shall be observed in warrant-cases. by Magistrates in the trial of warrant-cases.

COMMENT.—This Chapter lays down the procedure which should be strictly followed in the trial of warrant-cases.<sup>4</sup> A warrant-case means a case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months [s. 4 (w)]. Some warrant-cases are exclusively triable by a Court of Session or High Court and some are triable both by a Magistrate and a Court of Session. Chapter XVIII lays down the procedure to be observed by Magistrates in respect of cases triable by a Court of Session or High Court. There are also warrant-cases which may be tried by a Magistrate summarily (see s. 200).

In summons-cases (Chapter XX) no formal charge is necessary; in warrant-cases after preliminary inquiry a formal charge is drawn up and thereafter the trial begins.

<sup>1</sup> *Pandurang v. Lazman*, (1901) 3 Bom. L. R. 77; *Mahadeo Ramkrishna*, (1922) 24 Bom. L. R. 805; *Ma E Myaing*, [1938] Ran. 168.

<sup>2</sup> *Pereira v. De Mello*, (1924) 26

Bom. L. R. 1243, 49 Bom. 440.

<sup>3</sup> *Sarab Dial v. Bir Singh*, (1928) 9 Lah. 462.

<sup>4</sup> *Dosabhai*, (1915) 17 Bom. L. R. 490.



A Magistrate cannot try a warrant-case as a summons-case. The procedure will be illegal and liable to be set aside.<sup>1</sup> The question whether a case is triable as a summons-case or as a warrant-case is to be decided by reference to the complaint, and not by reference to the particular sections of the Penal Code under which the conviction takes place.<sup>2</sup>

**Joint trial of summons-case and warrant-case.**—In the investigation of a complaint, which forms the subject of two distinct charges arising out of the same transaction, one of which is a summons and the other a warrant case, the procedure should be that prescribed for warrant-cases.<sup>3</sup>

**252. (1)** When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the Evidence for complainant (if any) and take all such evidence as may be produced in support of the prosecution :

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

**(2)** The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

**COMMENT.**—When the accused is brought before a Magistrate, he should proceed to hear the complainant and take all such evidence as he may produce. The Magistrate should also summon such persons whom the complainant wishes to give evidence to support his case. Such evidence must be taken in the manner laid down in s. 188 of the Indian Evidence Act and if the accused so desires he cannot be refused an opportunity to cross-examine the witnesses produced in support of the prosecution. The opportunity allowed by the Legislature to the accused in s. 256 of cross-examining the witnesses for the prosecution after the charge sheet has been framed cannot be substituted for the opportunity to which he is entitled when the witnesses are examined and before the charge sheet is framed.<sup>4</sup>

Where a complaint is filed by a Court the Magistrate is not bound to hear any person as complainant.

**253. (1)** If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the Discharge of accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

**(2)** Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

**COMMENT.**—Sub-section (1).—This sub-section enables a Magistrate to discharge the accused after taking the evidence tendered by the complainant

<sup>1</sup> *Chinnapayan*, (1906) 29 Mad. 372.

<sup>2</sup> *Ganga Saran*, (1920) 19 A. L. J. R. 6.

<sup>3</sup> *Rajnaratn Koonwar v. Lala Tamoli Raut*, (1884) 11 Cal. 91; *Sobhanaadri*, (1915) 39 Mad. 503; *Raghavatu Naicker*

*v. Singaram*, (1918) 41 Mad. 727.

<sup>4</sup> *Sayed Mohammad Husain Afqar Mohani v. Mirza Fakhrullah Beg.* (1932) 8 Luck. 185.

and examining the accused. It does not render the writing of reasons necessary. But it is desirable that the Magistrate should record his reasons for discharge though it is not compulsory.<sup>1</sup>

**Sub-section (2).—**This sub-section enables a Magistrate to discharge the accused at any previous stage of the case if he considers the charge to be groundless. "Groundless" means that the evidence is such that no conviction could be rested on it, and not that the evidence discloses no offence whatever. A Magistrate is not bound to examine all the witnesses that may be tendered or available before taking action under this sub-section.<sup>2</sup>

The Magistrate is bound to record his reasons when acting under this sub-section.

**Fresh proceedings after discharge.**—An order of discharge under this section does not amount to an acquittal and does not bar further proceedings against the accused (s. 408, expln. 1). It is not a "judgment". There can be no trial when the accused is discharged. A Magistrate having passed an order of discharge is competent to take fresh proceedings and issue process against the accused in respect of the same offence without an order for further inquiry being passed under s. 487 of the Criminal Procedure Code, having the effect of setting aside such order of discharge.<sup>3</sup> When an accused has been discharged for absence of the complainant on the day of hearing, it is competent to the Magistrate to entertain a second complaint on the same facts from the same complainant.<sup>4</sup> But when there is reasonable ground for believing that an offence has been committed, the Magistrate should not dismiss the case, because the complainant is absent. In such a case, once the machinery of law has been set in motion, the right of arresting its progress rests with the State alone.<sup>5</sup>

**254.** If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished<sup>1</sup> by him, he shall frame in writing a charge<sup>2</sup> against the accused.

**COMMENT.**—This section enables a Magistrate to frame a charge (1) after the evidence for the prosecution and examination of the accused are over, or (2) at any previous stage if the Magistrate forms the opinion that a *prima facie* case has been made out against the accused.

1. 'Competent to try, and which, in his opinion, could be adequately punished.'—A Magistrate may be competent to try a case but if he is of the opinion that he could not adequately punish the accused he must commit the case to the Court of Session under s. 213 or s. 347.<sup>3</sup> Unless the Magistrate holds the view that his powers of punishment are insufficient, he is bound to try those cases which are

<sup>1</sup> *Nabi Fakira*, (1907) 9 Bom. L. R. 250. *Maheswara Kondaya*, (1908) 31 Mad. 543.

<sup>2</sup> *Kasinatha Pillai v. Shammugam Pillai*, (1929) 52 Mad. 978; *Muhammad Ibrahim Haji Moula Bakhsh*, [1941] Kar. 845. <sup>4</sup> *Amanat Kadar*, (1928) 31 Bom. L. R. 146.

<sup>3</sup> *Dolegobind*, (1900) 28 Cal. 211; *Mir Ahmad Hossein v. Mahomed Askari*, (1902) 29 Cal. 728, F.B.; *Channa Kalkappa Gounder*, (1905) 29 Mad. 126; <sup>5</sup> *Fazlar Rahaman*, (1930) 58 Cal. 346.

<sup>6</sup> *Kayemullah Mandal*, (1897) 24 Cal. 429; *Bindeshri Goshain*, (1919) 41 All. 454.

within his own jurisdiction, instead of sending them to the Sessions Court to be tried.<sup>1</sup>

A Magistrate of the second or third class may be unable to punish the accused by a sentence which a Magistrate of the first class can pass. He must then submit his proceedings and send the accused to the Magistrate to whom he is subordinate under s. 249.

2. 'Charge.'—As to the language and form of charge see ss. 221-223, *supra*. The charge is to be framed by the Magistrate. The fact of charging indicates that a *prima facie* case exists. The charge should contain all that is necessary to constitute the offence charged, and all that is requisite in order that the accused may have notice of the matter with which he is to be charged.<sup>2</sup> When a case is being tried as a warrant-case, and a charge is drawn up of an offence which is triable as a warrant-case, and it is intended to proceed against the accused also for an offence which is triable only as a summons-case, that offence should form part of the charge.<sup>3</sup>

255. (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the Magistrate shall record the plea,<sup>4</sup> and may in his discretion convict him thereon.<sup>5</sup>

COMMENT.—The charge must be read and explained to the accused so that he understands the nature of it thoroughly.<sup>6</sup> Where the charge was not properly explained to the accused, the High Court set aside the conviction and ordered a new trial.<sup>7</sup>

1. 'Magistrate shall record the plea.'—If the accused pleads "guilty" the Magistrate is bound to record the plea. If the plea is not recorded the conviction will be set aside.<sup>8</sup> A pleader cannot plead "guilty" or "not guilty" on behalf of his client.<sup>9</sup>

2. 'May in his discretion convict him thereon.'—The Magistrate is given the discretion to convict an accused on his plea of guilty, but he is not bound to do so.<sup>10</sup>

255A. In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under section 255, sub-section (2), or section 258, take evidence in respect of the alleged previous conviction, and shall record a finding thereon.

COMMENT.—The Magistrate can take evidence of the alleged previous conviction after conviction of the accused.

256. (1) If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state, at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith,<sup>1</sup> whether he wishes to cross-examine any, and, if so, which,

<sup>1</sup> *Basdeo*, [1945] All. 422, 423.

<sup>2</sup> *Sant Singh*, (1888) P. R. No. 26 of 1889.

<sup>3</sup> *Hossein Sardar v. Kalu Sardar*, (1902) 29 Cal. 481.

<sup>4</sup> *Vaimbilee*, (1880) 5 Cal. 826.

<sup>5</sup> *Aiyavu*, (1885) 9 Mad. 61.

<sup>6</sup> *Gopal Dhanuk*, (1881) 7 Cal. 96.

<sup>7</sup> *Sursike*, (1904) 6 Bom. L. R. 861.

<sup>8</sup> *Kunwar Sen*, (1932) 8 Luck. 286.

of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.

(2) If the accused puts in any written statement, the Magistrate shall file it with the record.

**COMMENT.**—After a charge has been drawn up the accused is entitled to have the witnesses for the prosecution recalled for the purposes of cross-examination. This section gives the Magistrate no discretion in the matter. It is the duty of the Magistrate to require the accused to state whether he wishes to cross-examine, and if so, which of the witnesses for the prosecution whose evidence has been taken.<sup>1</sup> The fact that there has already been some cross-examination before the charge has been drawn up does not affect this privilege. It is only after the accused has entered upon his defence that the Magistrate is given a discretion to refuse such an application on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.<sup>2</sup>

This section does not prohibit the accused from cross-examining the witnesses for the prosecution before the charge is framed.<sup>3</sup> As a matter of practice or discretion Magistrates should permit some cross-examination before framing a charge, otherwise s. 258 would become a dead letter.<sup>4</sup>

**Scope.**—This section does not apply to an inquiry under s. 117.<sup>5</sup>

This section enables the Crown to examine witnesses, who have not been examined, or whose names have not been disclosed, before the charge is framed. If the accused desires time to enable him to cross-examine witnesses whose names have not been disclosed, it is open to the Magistrate to give time, just as it is open to him to give the prosecution time to ascertain the antecedents of the witnesses produced by the accused at the trial without the assistance of the Court.<sup>6</sup>

1. 'At the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith.'—These words indicate that sufficient time should be given to the accused to consider whether he wishes to cross-examine any of the prosecution witnesses after the framing of the charge, and it is only in special cases that the Magistrate can require him to state forthwith if he so wishes.<sup>7</sup> The accused can be asked about it forthwith on the day the charge is framed, provided the Magistrate records in writing his reasons for the course adopted.<sup>8</sup>

The Allahabad, the Lahore and the Bombay High Courts have held that omission to record reasons for requiring the accused to state forthwith after the framing of the charge whether he wishes to cross-examine the prosecution witnesses does not render the trial illegal if it has not caused any prejudice to the accused.<sup>9</sup> The

<sup>1</sup> *Varisai Rowther*, (1922) 46 Mad. 449, 462, F.B.

<sup>2</sup> *Zamunia v. Ram Tahal*, (1900) 27 Cal. 370; <sup>3</sup> *Nasarwanji*, (1900) 2 Bom. L. R. 542.

<sup>4</sup> *Sagal*, (1898) 21 Cal. 642.  
<sup>5</sup> *Lachmi Narain*, (1931) 54 All. 212.

<sup>6</sup> *Chintaman Singh*, (1937) 85 Cal. 243.

<sup>7</sup> *Nagindas Narottamdas*, (1942) 44 Bom. L. R. 452.

<sup>8</sup> *Ramchandra Modak*, (1925) 5 Pat. 110.

<sup>9</sup> *Lakshman*, (1929) 31 Bom. L. R. 593, 53 Bom. 579.

<sup>10</sup> *Chhajju*, (1926) 49 All. 316; *Mussammatt Ghariti*, (1925) 6 Lah. 554; *Vishram*, (1930) 32 Bom. L. R. 596.

Madras High Court is of the opinion that where the accused is represented by pleader the Magistrate may ask him forthwith whether he wishes to call the prosecution witnesses for cross-examination. But where he is not so represented the Magistrate must record his reasons for doing so and a failure to do so vitiates the trial.<sup>1</sup>

**Sub-section (2).**—This section is the only section under which the accused can put in his written statement in the trial of a warrant-case in the Magistrate's Court. There appears to be no reason why, if the accused has already prepared a written statement, he should not be allowed to file it in the Court of Session.<sup>2</sup>

**257. (1)** If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling production of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process<sup>1</sup> unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing :<sup>2</sup>

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.

**(2)** The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

**COMMENT.**—The preceding section relates to proceedings after the charge is framed and before the accused is called upon to enter upon his defence. This section relates to proceedings after he has entered upon his defence. It enables the Magistrate to refuse process to compel the attendance of a witness for the prosecution, whose evidence has been taken, for the purpose of cross-examination, (1) if he has already been cross-examined after the charge has been framed, or (2) if the accused has had an opportunity of cross-examining<sup>3</sup> him after the charge has been framed (s. 256), unless he is satisfied that it is necessary for the purposes of justice.

**1. 'The Magistrate shall issue such process, etc.'**—This section is imperative in its terms. It leaves to a Magistrate no discretion to refuse to issue process to compel the attendance of any witness, unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice ; such ground, however, must be recorded by him in writing. The discretionary power of refusing to summon any particular witness is vested in the Magistrate, but the order of refusal must be such as to show in writing the ground of refusal as applied to each individual.<sup>4</sup> The appellant at the trial refused to cross-examine any of the prosecution witnesses and to answer any question both before and after the charge was framed. On the date fixed for arguments, appellant engaged counsel who requested the Magistrate to re-call all the witnesses for cross-examination. This the Magistrate re-

<sup>1</sup> *Raju Achari*, (1926) 50 Mad. 1043.

<sup>2</sup> *Purushottam Kara*, (1902) 26 Bom. 740.

<sup>3</sup> *Jhabwala*, (1933) 55 All. 1040, 418, 4 Bom. L. R. 38.

fused to do. It was held that the Magistrate was justified in doing so. The accused was "mute of malice" and this proviso was enacted to deal with cases like these.<sup>1</sup>

2. 'Such ground shall be recorded by him in writing.'—Where the Magistrate trying an offence rejected an application by the accused that a certain person might be examined on his behalf either in Court or by commission, without recording his reasons for refusing to summon such person, it was held that the conviction of the accused must be set aside, and the case be re-opened by such Magistrate.<sup>2</sup>

258. (1) If in any case under this Chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where in any case under this Chapter the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

COMMENT.—Under s. 258 a Magistrate is empowered to discharge the accused if the case for the prosecution is not proved. But after the framing of a charge the accused must either be acquitted or convicted. He cannot then be discharged. Even if he discharges the accused, the discharge would amount to an acquittal.<sup>3</sup>

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

COMMENT.—If the complainant is absent on the day fixed for the hearing of the case, the Magistrate may, in his discretion, discharge the accused if the offence is (1) compoundable (see s. 345) or (2) non-cognizable. Otherwise he should proceed with the trial.<sup>4</sup> Under s. 247 the accused is generally entitled to acquittal if the complainant is absent but under this section the Magistrate has a discretion and may proceed with the case.<sup>5</sup> Similarly, if a charge is framed and the complainant dies subsequently, the Magistrate must proceed with the case.<sup>6</sup> Where in the course of a trial for defamation the complainant dies, the Magistrate need not discharge the accused but can continue with the trial. Such a course would ordinarily be desirable where the defamation alleged is against the complainant in his public capacity.<sup>7</sup>

In a warrant-case in respect of a non-compoundable offence, it is not competent to the Magistrate on a private complainant's offering to withdraw from the prosecution to enter an order of acquittal.<sup>8</sup>

<sup>1</sup> *Khuda Bakhsh*, (1935) 17 Lah. 284.

<sup>2</sup> *Sat Narain Singh*, (1881) 3 All. 392; *Manmohan Dasidhar v. Bankim Behari Chowdhury*, (1924) 51 Cal. 1044.

<sup>3</sup> *T. Sridamulu v. K. Veerasalingam*, (1914) 38 Mad. 585.

<sup>4</sup> See *Nanjit*, (1890) Unrep. Cr.

C. 524, Cr. R. No. 54 of 1890; *Govinda Das v. Dulali Dass*, (1883) 10 Cal. 67.

<sup>5</sup> *U Tin Maung*, [1941] Ran. 224.

<sup>6</sup> *Narayana Naick*, (1931) 54 Mad. 768.

<sup>7</sup> *U Tin Maung*, sup.

<sup>8</sup> *Ranchhod Bawla*, (1912) 37 Bom. 360, 15 Bom. L. R. 61.

An order of discharge under this section is not an acquittal nor has it the effect of an acquittal under s. 408.<sup>1</sup> The High Court, the Sessions Judge, or the District Magistrate may order further inquiry to be made into the case of any accused person who has been discharged (s. 487). Similarly, a Magistrate who is competent to take cognizance of the offence may take fresh proceedings (see s. 258).

As to the effect of non-appearance of the complainant in a summons-case, see s. 247.

## CHAPTER XXII.

### OF SUMMARY TRIALS.

**Power to try summarily.**      **260.** (1) Notwithstanding anything contained in this Code,—

(a) the District Magistrate,  
(b) any Magistrate of the first class specially empowered<sup>1</sup> in this behalf by the Provincial Government, and

(c) any Bench of Magistrates invested with the powers of a Magistrate of the first class and especially empowered in this behalf by the Provincial Government, may, if he or they think fit,<sup>2</sup> try in a summary way<sup>3</sup> all or any of the following offences :—

(a) offences not punishable with death, transportation or imprisonment for a term exceeding six months ;

(b) offences relating to weights and measures under sections 264, 265 and 266 of the Indian Penal Code ;

(c) hurt, under section 323 of the same Code ;

(d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees ;

(e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed fifty rupees ;

(f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed fifty rupees ;

(g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees ;

(h) mischief, under section 427 of the same Code ;

(i) house-trespass, under section 448, and offences under sections 451, 452, 454, 456 and 457 of the same Code ;

(j) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code ;

<sup>1</sup> *Chinnathambi Mudali v. Salla* [1948] K.L.R. 103.  
*Gurusamy*, (1904) 28 Mad. 310 ; *Nazo*,

(k) abetment of any of the foregoing offences ;  
 (l) an attempt to commit any of the foregoing offences, when such attempt is an offence ;

(m) offences under section 20 of the Cattle Trespass Act, 1871 ;

Provided that no case in which a Magistrate exercises the special powers conferred by section 84 shall be tried in a summary way.

(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to re-hear the case in manner provided by this Code.

**COMMENT.**—Summary trial implies speedy disposal. By summary case is meant a case which can be tried and disposed of at once. Summary trial is not intended for a contentious and complicated case which necessitates a lengthy enquiry.

The object of summary trial is to have a record sufficient for the purpose of justice but not so long as to impede speedy disposal of cases. In a summary trial the process is as in a summons-case or a warrant-case according to the nature of the offence. If the offence is a summons-case evidence is not recorded : if the offence is a warrant-case, the Magistrate makes a memorandum of the substance of the evidence of each witness. At the conclusion of the trial the Magistrate enters the accused's plea and the finding in a form prescribed by Government. No formal charge is framed. In the case of a conviction a brief statement of the reasons is stated. There is no appeal in such a trial if a sentence of fine only not exceeding two hundred rupees has been awarded. There can be an application for revision to the High Court.

1. 'Any Magistrate of the first class specially empowered.'—The provisions of summary trial do not apply to trials before Presidency Magistrates.<sup>1</sup>

2. 'If he or they think fit.'—It is in the discretion of a Magistrate to try any of the offences specified in the section in a summary way. Whether a case is triable summarily or not must be determined by the offence complained of<sup>2</sup> and the testimony of the complainant.<sup>3</sup> If a case is a complicated one, it should not be tried summarily.<sup>4</sup> If the accused is deaf and dumb it is convenient to try him summarily.<sup>5</sup>

Where an accused is charged with two offences, one of which is triable summarily, and the other not so triable, it is not open to a Magistrate to discard the latter charge, and to proceed to try the case summarily.<sup>6</sup>

3. 'Try in a summary way.'—In a summary trial the procedure laid down by this Chapter should be strictly observed. A summary trial is summary only in respect of the record of its proceedings and not in respect of the proceedings themselves which should be complete and carefully conducted.

\* **Clause (a).—Nature of punishment.**—Offences to be tried summarily need not be punishable under the Penal Code. Offences under special or local Acts can

<sup>1</sup> *Abdul*, (1891) Unrep. Cr. C. 339.

<sup>2</sup> *Jagjwan*, (1887) 10 All. 55 ;  
*Bishu Shaikh v. Sabar Mollah*, (1902)  
 29 Cal. 409.

<sup>3</sup> *Fanindra Nath Chatterjee*, (1908)  
 36 Cal. 67.

<sup>4</sup> *Hari Gopal*, (1895) Unrep. Cr. C.  
 778, Cr. R. No. 2 of 1895 ; *Dina Nath*,

(1913) 85 All. 173 ; *Rustomji*, (1921)  
 23 Bom. L. R. 984.

<sup>5</sup> *Deaf and Dumb Man*, (1906) 8  
 Bom. L. R. 849.

<sup>6</sup> *Ramanund Mahton v. Koylash  
 Mahton*, (1885) 11 Cal. 236 ; *Sheo  
 Bhajan Singh v. Musawi*, (1900) 27  
 Cal. 988.



be tried summarily if they fulfil the condition of punishment laid down in this clause, e.g., Bengal Abkari Act.<sup>1</sup> The imprisonment may be simple or rigorous.

Clause (d).—Theft.—The value of the property stolen should not exceed fifty rupees in a case of theft to be tried summarily. A shopkeeper made a report to the police of theft at his shop of several things, the total value of which was above Rs. 50. The police discovered part of the stolen property, which was less than Rs. 50 in value, with the accused, and prosecuted him. The case was tried summarily. The shop-keeper stated that the value of the property stolen was above Rs. 50. It was held that the Magistrate had jurisdiction to try the case summarily.<sup>2</sup>

Power to invest  
Bench of Magis-  
trates invested  
with less power.

261. The Provincial Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences :—

(a) offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 328, 384, 386, 341, 352, 426, 447 and 504 ;

(b) offences against Municipal Acts, and the conservancy clauses<sup>1</sup> of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine ;

(c) abetment of any of the foregoing offences ;

(d) an attempt to commit any of the foregoing offences, when such attempt is an offence.

COMMENT.—This section differs from the last section in this respect, that it is confined to certain offences against the Penal Code and against Municipal Acts and Police Acts. It does not extend to all special and local laws. There is no general provision in general terms similar to that in clause (a) of s. 260. Further, second and third class Magistrates cannot be empowered to act individually under this section ; only Benches of such Magistrates can be empowered.

1. 'Conservancy clauses.'—Such as slaughtering of animals, cruelty to animals, furious riding or driving, obstructing passers-by, etc.

262. (1) In trials under this Chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of imprisonment.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

COMMENT.—Where a Magistrate is trying a case summarily, it is desirable that he should set out under the column reserved for that purpose so much of the reasons that have influenced him as to satisfy the accused that the Magistrate has considered each of the ingredients necessary in law for the conviction to which the Magistrate has proceeded, and that while this should be recorded with brevity, the brevity should not be such as to tend to obscurity.<sup>3</sup>

<sup>1</sup> *Baidanath Das*, (1878) 3 Cal. 366, F.B.

<sup>2</sup> *Mukundi Lal*, (1899) 21 All. 189.

<sup>3</sup> *Sundar Teli*, (1930) 53 All. 218.

**Sub-section (2).—**This sub-section lays down the limit of the term of a sentence of imprisonment in a summary trial. If the Magistrate or Bench considers that a longer sentence of imprisonment is necessary in the interest of justice, the trial should be held as in a warrant-case or a summons-case according to the nature of the offence. A sentence exceeding the period fixed by this section is illegal.

In a summary trial an accused person convicted of more than one offence cannot be sentenced to imprisonment for a term exceeding three months in the aggregate under this sub-section. A sentence of three months' imprisonment may be inflicted on each charge to run concurrently but not consecutively.<sup>1</sup>

The limit of imprisonment refers only to the substantive sentence, not to an alternative sentence of imprisonment in default of payment of fine. A sentence of fine of Rs. 60 or four months' simple imprisonment in default of payment of fine is not illegal.<sup>2</sup> A Magistrate can impose a sentence of imprisonment in default of payment of fine in addition to the maximum sentence of three months' imprisonment which he has imposed for the offence.<sup>3</sup> There is no limit as to the amount of fine which may be imposed in a summary trial.<sup>4</sup>

**263.** In cases where no appeal lies, the Magistrate or Bench of Record in cases Magistrates need not record the evidence of the where there is no witnesses or frame a formal charge;<sup>1</sup> but he or appeal. they shall enter<sup>2</sup> in such form as the Provincial Government may direct the following particulars :—

- (a) the serial number ;
- (b) the date of the commission of the offence ;
- (c) the date of the report or complaint ;
- (d) the name of the complainant (if any) ;
- (e) the name, parentage and residence of the accused ;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e), clause (f) or clause (g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed ;
- (g) the plea of the accused and his examination (if any) ;<sup>3</sup>
- (h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor ;<sup>4</sup>
- (i) the sentence or other final order ; and
- (j) the date on which the proceedings terminated.

**COMMENT.**—The register containing the particulars mentioned in this section forms the record in a summary trial. The evidence of witnesses need not be recorded nor a formal charge framed. In non-appealable cases the particulars specified in this section must be entered into the register. In appealable cases a judgment containing the substance of evidence is necessary (*vide* s. 264).

1. 'Where no appeal lies, the Magistrate .... need not record the evidence .... or frame a formal charge.'—No appeal lies in any case tried under s. 260 against a sentence of fine only not exceeding two hundred rupees (s. 414). But an appeal lies against an order of acquittal (s. 417) or when the sentence is a combination of one or more of the punishments specified in s. 414 (s. 415).

<sup>1</sup> *Nga Po Tay*, (1933) 12 F.A.M. 123.

<sup>2</sup> *Asghar Ali*, (1933) 3 All. 61.

<sup>3</sup> *Po Hwa*, [1940] Ran. 223.

<sup>4</sup> *Dina Nath*, (1913) 35 All. 173.

The Magistrate need not record in writing the evidence of witnesses in non-appealable cases, but he must hear the evidence of all the witnesses.<sup>1</sup> If the Magistrate records the evidence, the notes of evidence form part of the record. Where a Magistrate destroyed his notes, the Calcutta High Court set aside the conviction.<sup>2</sup> The Bombay and the Allahabad High Courts are of the opinion that destruction of such notes does not amount to an illegality.<sup>3</sup> The notes are the Magistrate's private property which he can treat exactly as he pleases.<sup>4</sup> The rough and incomplete notes are outside the record.<sup>5</sup>

A formal charge need not be framed but the accused has a right to be informed of the precise nature of the offence with which he is charged. The record should state the offence clearly and distinctly.<sup>6</sup>

2. 'He or they shall enter.'—The Magistrate must write the particulars himself. He cannot depute that duty to his clerk, nor is he authorized to affix his signature to the record or judgment by a stamp.<sup>7</sup> The record should be made at the time of the trial and not afterwards. Where a Magistrate without issuing process or making record of proceedings or dismounting from a pony on which he was riding convicted the accused of a municipal offence, it was held that as the record must have been prepared after the close of the trial from memory or rough notes, the procedure was illegal.<sup>8</sup>

3. 'His examination (if any).'<sup>9</sup>—There must be examination of the accused in all warrant-cases. This section is governed by s. 342. The words "if any" do not apply to warrant-cases.<sup>10</sup>

4. 'In the case of a conviction, a brief statement of the reasons therefor.'<sup>11</sup>—The statement of reasons must clearly state the grounds upon which the conviction and sentence rest. The reasons must be so stated that the High Court on revision may judge whether there were sufficient materials before the Magistrate to support the conviction.<sup>12</sup>

The Calcutta and the Madras High Courts have held that failure to record a brief statement of reasons is fatal, and the proceedings will be set aside.<sup>13</sup> The Bombay High Court has held that such an omission amounts to irregularity which can be cured by s. 537, especially where the case is a non-appealable one and there is clear evidence justifying the conviction.<sup>14</sup> In view of the Privy Council decision in *Abdul Rahman's* case,<sup>15</sup> the decisions of the Calcutta and the Madras High Courts require reconsideration.

The Chief Court of Sind has held that reading this section and s. 264 it is clear that a brief statement of reasons is to be given only in a case of conviction and not in a case of acquittal.<sup>16</sup>

<sup>1</sup> *Jabbar Shaik v. Tamiz Shaik*, (1912) 39 Cal. 931.

<sup>2</sup> *Satish Chandra Mitra v. Manmatha Nath*, (1920) 48 Cal. 280; *Atma Ram*, (1920) 49 All. 131.

<sup>3</sup> *Chimanlal*, (1927) 29 Bom. L. R. 710; *Mantu Tiwari*, (1926) 49 All. 261, see contra, *Atma Ram*, sup.

<sup>4</sup> *Mantu Tiwari*, sup.

<sup>5</sup> *Chimanlal*, sup.

<sup>6</sup> *Madho*, (1882) 2 A. W. N. 59; *Madhab Chandra Saha*, (1926) 53 Cal. 738.

<sup>7</sup> *Subramanya Ayyar*, (1883) 6 Mad. 396.

<sup>8</sup> *Eragadu*, (1891) 15 Mad. 83.

<sup>9</sup> *Mahomed Hossain*, (1914) 41 Cal. 743.

<sup>10</sup> *Shidgauda*, (1898) 18 Bom. 97.

<sup>11</sup> *Panjab Singh*, (1881) 6 Cal. 579; *Derwish Hussain*, (1922) 46 Mad. 253.

<sup>12</sup> *Namdeo Lakman*, (1924) 26 Bom. L. R. 1236.

<sup>13</sup> (1926) 54 I. A. 96, 5 Ran. 53, 29 Bom. L. R. 813.

<sup>14</sup> *Sugnomal*, [1941] Kar. 545.

**264. (1)** In every case tried summarily by a Magistrate or Bench in which an appeal lies,<sup>1</sup> such Magistrate or Bench shall, before passing sentence, record judgment embodying the substance of the evidence<sup>2</sup> and also the particulars mentioned in section 263.

**(2)** Such judgment shall be the only record in cases coming within this section.

**COMMENT.**—The judgment to be recorded in appealable cases must contain the particulars mentioned in s. 263 and something more, namely, the substance of the evidence on which the conviction was based.

1. 'In which an appeal lies.'—See ss. 407, 408, 413, 414, *infra*, as to appeal.

This section does not apply to a case of acquittal, though the Government can appeal.

2. 'Substance of the evidence.'—The evidence must be sufficient to justify the Magistrate's order.<sup>3</sup> It must be so set forth in the judgment as to enable the appellate Court to perform its function in appeal.

The Allahabad High Court has held that if the evidence is not so set forth the Magistrate may be required to do so even after re-examining the witnesses, or a re-trial may be ordered.<sup>4</sup> The Bombay<sup>5</sup> and the Calcutta<sup>6</sup> High Courts have held that the omission to comply with the provisions of this section vitiates the trial.

**265. (1)** Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother tongue.

**(2)** The Provincial Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

**(3)** If no such authorization be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

**(4)** If the Bench differ in opinion, any dissentient member may write a separate judgment.

**COMMENT.**—By whomsoever the judgment and record may have been written, they shall be signed by all the members present.<sup>7</sup> The Magistrate must write his full name, and the mere putting in of the initials is not sufficient.<sup>8</sup>

<sup>1</sup> *Anindai Sheikh*, (1900) 27 Cal. 450.

<sup>2</sup> *Karan Singh*, (1878) 1 All. 680.

<sup>3</sup> *Nurudin*, (1928) 30 Bom. L. R. 954.

<sup>4</sup> *Kheraj Mullah*, (1878) 41 Beng. L. R. 33, 20 W. R. (Cr.) 13.

<sup>5</sup> *Nathan*, (1929) 53 Mad. 165, contra, *Rama Kottiah v. Subba Rao*, (1928) 52 Mad. 237, which is not a sound decision.

<sup>6</sup> *Velivalli Brahmaiah*, (1930) 54 Mad. 252.

## CHAPTER. XXIII.

## OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

*A.—Preliminary.*

**266.** In this Chapter, except in sections 276 and 307, and in Chapter XVIII, the expression “High Court” means a High Court within the meaning of the Government of India Act, 1935, and includes such other Courts as the Provincial Government may by notification in the Official Gazette declare to be High Courts for the purposes of this Chapter and of Chapter XVIII.

**267.** All trials under this Chapter before a Court to be by jury. High Court shall be by jury,

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the Indian High Courts Act, 1861, or the Government of India Act, 1915, or the Government of India Act, 1935, the trial may, if the High Court so direct, be by jury.

**COMMENT.**—Under s. 526 (e) (iii) of the Code the High Court may order that any particular case be transferred to and tried before itself. Similarly, the Letters Patent for Bengal, Bombay and Madras (cl. 29) and for the United Provinces of Oudh and Agra (cl. 22) empower the High Court to transfer for trial before itself any criminal case or appeal from a Court subordinate to it.

The High Court in such case has a discretionary power to order a re-trial by jury.

**268.** All trials before a Court of Session shall be either by jury, or with the aid of assessors.<sup>1</sup>

**COMMENT.**—This section provides that all trials before a Court of Session shall be either by jury or with the aid of assessors. Where no notification under s. 269 is issued, every trial before a Court of Session must be with the aid of assessors.

1. ‘Either by jury, or with the aid of assessors.’—In a trial by jury, the jury is the real tribunal, but is aided by the Judge: in a trial by assessors, the Judge is the sole tribunal aided by each of the assessors. The Judge is the sole judge of law and fact and the responsibility of the decision rests only with him.<sup>2</sup> In a trial by jury the position of the Sessions Judge is exactly the same as the jury in dealing with the evidence given before him, and he has to confine his attention to that evidence.<sup>3</sup>

There is no distinction as to the procedure at the trial between a trial by jury and one with the aid of assessors except as to the summing up in the case of the former—and the manner in which the verdict of the former and the opinion of the assessors in the latter are respectively taken.<sup>4</sup>

**Evidence recorded in absence of assessors.**—A Court of Session is authorized to record evidence in the absence of jury or assessors, where additional evidence is called for by the appellate Court (s. 428).<sup>5</sup>

<sup>1</sup> *Tirumal Reddi*, (1901) 24 Mad. 523, 537-38.

<sup>2</sup> *Jadub Das*, (1899) 27 Cal. 295.

<sup>3</sup> *Mavsing Bechar*, (1909) 11 Bom. L. R. 830, 83 Bom. 423.

<sup>4</sup> *Ram Lal*, (1898) 15 All. 186.

**Erroneous trial.**—Section 536 provides for dealing with trials erroneously held by jury instead of with the aid of assessors and vice versa. They are not invalid.

**269. (1)** The Provincial Government may, by order in the Official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may revoke or alter such order.

Provincial Government may order trials before Court of Session to be by jury.

(2) The Provincial Government, by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offences shall, if the Judge, on application made to him or of his own motion so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(3) When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors,<sup>1</sup> for such of them as are not triable by jury.

**COMMENT.**—The right of trial by jury in India is not a common law right, but a statutory right and is no longer dependent upon the orders of Government under this section. The fact that three juries come to certain conclusions on facts with which a trial Judge cannot agree and orders a fourth trial is not of itself sufficient ground for depriving an accused person of the right to a trial by a jury, by transferring the case from a jury district to a non-jury district.<sup>1</sup>

**Sub-section (3).**—Where the accused is charged with an offence triable by a jury and also with an offence triable with the help of assessors, the Judge must constitute all the jurors as assessors for trying the non-jury offence.<sup>2</sup>

**1. 'With the aid of the jurors as assessors.'**—When the jurors are treated as assessors, the Judge should take the opinion of all the jurors as assessors and not some of them alone.<sup>3</sup>

**Trial by jury of offences triable with assessors.**—Such a trial is not invalid, but the accused is not deprived of his right to appeal on the facts of the case if the trial had been with the aid of assessors.<sup>4</sup> The accused must object to such a procedure before the verdict is given; he cannot complain of it subsequently in appeal.<sup>5</sup> The Sessions Judge must treat such a trial by jury as a jury case and he must give verdict accordingly.<sup>6</sup>

**Trial by assessors of offences triable by jury.**—Under s. 536 (2), if a jury case is tried with the aid of assessors, and no objection is taken at the trial the trial stands good.<sup>7</sup>

**270.** In every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor.<sup>1</sup>

Trial before Court of Session to be conducted by Public Prosecutor.

<sup>1</sup> *Hundraj*, [1944] Kar. 260.

<sup>2</sup> *Abdul Hamid*, (1926) 6 Pat. 208.

<sup>3</sup> *Ramakrishna Reddy*, (1903) 20 Mad. 593.

<sup>4</sup> *Mohim Chunder Rai*, (1878) 3 Cal. 705.

<sup>5</sup> *Mausing Bechar*, (1909) 11 Bom. L. R. 350, 33 Bom. 423; *Gulabchand*, (1925) 27 Bom. L. R. 1416.

<sup>6</sup> *Surja Kurmi*, (1898) 25 Cal. 555.

<sup>7</sup> *Ganupathi*, (1900) 23 Mad. 632, 635.

**COMMENT.—1.** 'Public Prosecutor.'—See ss. 402, 403. *The Public Prosecutor may avail himself of the services of counsel engaged by a private individual.*<sup>1</sup>

**B.—Commencement of Proceedings.**

**271. (1)** When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him,<sup>1</sup> and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

**(2)** If the accused pleads guilty,<sup>2</sup> the plea shall be recorded, and he may be convicted<sup>3</sup> thereon.

**COMMENT.—**This and the following section deal with the plea of accused.

**1.** 'Explained to him.'—Mere reading of the charge is not sufficient. It should be explained sufficiently to enable the accused to understand the nature of the charge to which he is called upon to plead.<sup>4</sup> If the charge is not explained the conviction will be quashed.

**2.** 'If the accused pleads guilty.'—The accused should plead by his own mouth and not through his counsel or pleader.<sup>5</sup> Any admission made by his pleader is not binding on him.<sup>6</sup>

The accused can plead guilty under this section, or he can claim to be tried under s. 272, or he can refuse to plead. The plea of "not guilty" is not recognized by the Code<sup>7</sup> and it amounts to a claim to be tried.

**3.** 'He may be convicted.'—The Court has a discretion to convict the accused when he pleads guilty or to proceed with the trial. The proper exercise of this discretion is of considerable importance in the case of persons tried jointly, when some plead guilty and the others claim to be tried.<sup>8</sup> When the accused pleads guilty he may be convicted, or evidence taken as if the plea had been one of "not guilty," and the case decided upon the whole of the evidence including the accused's plea. When such a procedure is adopted, the trial does not terminate with the plea of guilty. It does not strictly end until the accused has been either convicted or acquitted or discharged. As a matter of practice Judges prefer not to act on the plea of guilty in murder cases.<sup>9</sup>

**272.** If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Refusal to plead or claim to be tried.

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively<sup>1</sup> as the Court thinks fit.

**COMMENT.—**If the accused refuses to plead or claims to be tried, the Court must proceed to try the case. The actual trial does not begin until the charge has been read and the accused claims to be tried. The jurors or assessors are then

<sup>1</sup> *Narayan M. Pendse*, (1874) 11 B. H. C. R. 102.

<sup>2</sup> *Bhadu*, (1898) 19 All. 119; *Trim-baka*, (1901) 8 Bom. L. R. 489.

<sup>3</sup> *Sursing*, (1904) 6 Bom. L. R. 861.

<sup>4</sup> *Sangaya*, (1900) 2 Bom. L. R. 751.

<sup>5</sup> *Nirmal Kanta Roy*, (1914) 41

Cal.<sup>1</sup> 1072.

<sup>6</sup> *Khardia*, (1890) 15 Bom. 66.

<sup>7</sup> *Chinna Pavuchi*, (1890) 23 Mad.

151; *Chinia Bhika*, (1896) 8 Bom. L.

R. 240; *Laxmya Shiddappa*, (1917)

19 Bom. L. R. 356; *Bhadu*, sup;

*Vishwanath*, [1945] Nag. 492.

chosen.<sup>1</sup> The pleas that arise in criminal trials are four, viz. (1) *autrefois acquit* (previous acquittal) (s. 403); (2) *autrefois convict* (previous conviction) (s. 403); (3) pardon (s. 387); and (4) not guilty. The first three are special pleas and must be proved by the accused, the fourth is a general issue and must be disproved by the prosecution.

This section must be read subject to the provisions of s. 438.<sup>2</sup>

1. 'Same jury may try,....accused persons successively.'—On the conclusion of one trial the same jury may proceed to try the accused in the next case.<sup>3</sup>

273. (1) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

(2) Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

COMMENT.—An entry made under this section is not an acquittal for the purpose of s. 403, *infra*. The Public Prosecutor also may, with the permission of the Court, withdraw from the prosecution of any person (s. 404).

#### C.—Choosing a Jury.

274. (1) In trials before the High Court the jury shall consist of nine persons.

(2) In trials by jury before the Court of Session the jury shall consist of such uneven number, not being less than five or more than nine, as the Provincial Government, by order applicable to any particular district or to any particular class of offences in that district, may direct:

Provided that, where any accused person is charged with an offence punishable with death, the jury shall consist of not less than seven persons and, if practicable, of nine persons.

COMMENT.—The jurors for the trial must be of the number directed by Government under this section. A trial held by a greater number is illegal, as the Court is not properly constituted and the error is not curable by s. 587.<sup>4</sup>

Where in a trial for murder out of eighteen persons summoned as jurors, nine persons were present, and the Judge having drawn seven names out of the nine by lot stopped, instead of making any attempt to empanel a jury of nine persons, it was held that the trial was vitiated *ab initio*, inasmuch as it was practicable to get a jury of nine.<sup>5</sup> But where only seven jurors were present in Court out of eighteen summoned and the trial took place with seven jurors it was held that it must be assumed that it was not practicable to have more than seven jurors and the trial was not therefore vitiated.<sup>6</sup> Out of eighteen jurors summoned in a trial on a murder charge only seven attended, one of whom was excused on the ground of illness and two were successfully objected. The remaining four persons were empanelled together with

<sup>1</sup> *Bastiano*, (1890) 15 Bom. 514.

902.

<sup>2</sup> *Anant Narayan*, (1944) 47 Bom. L. R. 138.

<sup>3</sup> *Kishori Khara*, [1943] 1 Cal. 522.

<sup>4</sup> *Benat Pramanik*, (1935) 62 Cal. 900, dissenting from *Shahab Ali*, (1931) 58 Cal. 1272.

<sup>5</sup> *Hossein Buksh*, (1880) 6 Cal. 96.

<sup>6</sup> *George Booth*, (1908) 26 All. 211; *Pandu Kusha*, (1948) 45 Bom. L. R.



three other persons found in the Court precincts and the trial was held with seven jurors only. It was held that the jury was not improperly constituted and the trial was not invalid.<sup>1</sup>

**275. (1)** In a trial by jury before the High Court or Court of Session of a person who has been found under the provisions of this Code to be an European or Indian British subject, a majority of the jury shall, if such person before the first juror is called and accepted so requires, consist, in the case of an European British subject, of persons who are Europeans or Americans and, in the case of an Indian British subject, of Indians.

**(2)** In any such trial by jury of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, a majority of the jury shall, if practicable and if such European or American before the first juror is called and accepted so requires, consist of persons who are Europeans or Americans.

**COMMENT.**—In order to claim the privilege under this section, the accused must make an application before the first juror is called and accepted.

This section is controlled by s. 528B which provides that if a person does not claim to be dealt with as an Indian British subject before the committing Magistrate he shall not assert the claim at any subsequent stage of the case. Where an Indian British subject did not claim to be dealt with as such before the committing Presidency Magistrate, it was held that he was not entitled to claim, before the High Court, to be tried by a jury consisting of a majority of Indians.<sup>2</sup>

**276.** The jurors shall be chosen by lot<sup>1</sup> from the persons summoned Jurors to be to act as such in such manner as the High Court chosen by lot. may from time to time by rule direct :

Provided that—

*first*, pending the issue under this section of rules for any Court Existing practice the practice now prevailing in such Court in respect maintained ; to the choosing of jurors shall be followed ;

*secondly*, in case of a deficiency of persons summoned, the number of persons not summoned when eligible ; jurors required may, with the leave of the Court, be chosen from such other persons as may be present ;

*thirdly*, in a trial before any High Court in the town which is the usual place of sitting of such High Court—

(a) if the accused person is charged with having committed an offence punishable with death, or

(b) if in any other case a Judge of the High Court so directs, the jurors shall be chosen from the special jury list hereinafter prescribed ; and

*fourthly*, in any district for which the Provincial Government has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325.

<sup>1</sup> *Asgar Ali Mandal*. [1944] 2 Cal. 305.

<sup>2</sup> *Harindra*, (1924) 51 Cal. 980, 991.

**COMMENT.**—The object of ss. 276-279 as to selection of jurors is to secure an impartial trial by rendering impossible any intentional selection of jurors to try a particular case.

1. 'Chosen by lot.'—The names of the jury must be drawn out of one box containing the names of all persons summoned to act as jurors.<sup>1</sup> If the Judge himself select the jurors instead of choosing them by lot, the trial is vitiated and the defect is not cured by s. 537.<sup>2</sup>

**Second proviso.**—This is a special provision to meet an emergency so that there may not be a deadlock. Persons who are within the precincts of the Court building, either because they have been summoned for other cases or by mere chance, are persons "present in Court" within the meaning of this proviso.<sup>3</sup> The section does not cast any duty upon the Judge to send his Court officers to other Court rooms and bring from there such jury men as were available. It merely says that in case of deficiency the number of jurors may, with the leave of the Court, be chosen from such persons as may be present.<sup>4</sup>

**Special jury.**—A trial for sedition before the High Court should ordinarily be before a special jury.<sup>5</sup>

277. (1) As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

(2) Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated :

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

**COMMENT.**—In a trial before a Court of Session the grounds of objection to a juror should be stated ; but in the High Court no such grounds are necessary. Peremptory challenges are allowed only in the High Court.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed :—

- (a) some presumed or actual partiality in the juror ;
- (b) some personal grounds, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years ;
- (c) his having by habit or religious vows relinquished all care of worldly affairs ;
- (d) his holding any office in or under the Court ;
- (e) his executing any duties of police or being entrusted with police-duties ;

<sup>1</sup> *Vithaldas*, (1876) 1 Bom. 462.

<sup>2</sup> *Bradshaw*, (1911) 33 All. 385.

<sup>3</sup> *Israel*, (1932) 59 Cal. 423 ; *Lala*, (1933) 56 All. 210, 212.

<sup>4</sup> *Mukundamurari Pal*, (1933) 61 Cal. 190.

<sup>5</sup> *Spratt* (No. 1), (1927) 30 Bom. L. R. 313.

(f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury ;

(g) his inability to understand the language in which the evidence is given, or when such evidence is interpreted the language in which it is interpreted ;

(h) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

279. (1) Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

(2) If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276, or if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury :

Provided that no objection to such juror or other person is taken under section 278 and allowed.

280. (1) When the jurors have been chosen, they shall appoint one of their number to be foreman.

(2) The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

(3) If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1878.

282. (1) If, in the course of a trial by jury at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

(2) In each of such cases the trial shall commence anew.<sup>1</sup>

COMMENT.—This section and s. 283 provide for the discharge of a jury before the verdict is delivered. Apart from these sections the Court has inherent power to discharge a jury, before the verdict, for misconduct or other similar ground, e.g. juror associating with the defence.<sup>1</sup>

1. 'Trial shall commence anew.'—A juror was discharged as he was found deaf after two witnesses had been examined and another juror was sworn in his

<sup>1</sup> *Rahim Sheikh*, (1923) 50 Cal. 481 ; *Rebibi Mohan Chakravarty*, (1923) 872 ; *Mamfru*, (1923) 51 Cal. 418, 480, 56 Cal. 150.

place. The trial was not commenced afresh, but the evidence of the witnesses was read over to and admitted by them. It was held that the trial was invalid.<sup>1</sup>

Discharge of jury  
in case of sickness  
of prisoner.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

#### *D.—Choosing Assessors.*

284. When the trial is to be held with the aid of assessors, not less than three and, if practicable, four shall be chosen from the persons summoned to act as such.

COMMENT.—The contrast between trial by jury and trial with the aid of assessors is that, in the former, the jury is the real tribunal but is aided by the Judge, and in certain matters directed by the Judge, but in the latter the Judge is the sole tribunal aided by each of the assessors. The jury form a tribunal or body with a foreman and the verdict is the verdict of the body. The jury may retire to consider their verdict. In the case of a trial with assessors, the assessors do not form a body and each acts and expresses his opinion individually, and the Judge records it separately. The Judge is the sole judge of law and fact. The assessors are not to retire for consultation and forming their opinion.<sup>2</sup>

The assessors are chosen by the Judge. No objection can be taken against an assessor as in the case of a juror. The trial will be invalid if it commences without the requisite number of assessors,<sup>3</sup> or where an assessor is owing to some infirmity unable to understand the proceedings,<sup>4</sup> or where an assessor is absent at different times in the course of the trial,<sup>5</sup> or where a person not in the list of assessors is chosen by the Judge as one of the assessors.<sup>6</sup>

Where a Sessions Judge is trying a case with the aid of assessors, it is the Judge plus the assessors who constitute the Court, not the Judge alone. Where, therefore, a Sessions Judge recorded evidence after the assessors had been discharged, it was held that the trial was illegal.<sup>7</sup>

284A. (1) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European or Indian British subject, if the European or Indian British subject accused, or where there are several European British subjects accused or several Indian British subjects accused, all of them jointly, before the first assessor is chosen so require, all the assessors shall, in the case of European British subjects, be persons who are Europeans or Americans or, in the case of Indian British subjects, be Indians.

(2) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, all the assessors shall, if practicable and if such European or American before the first assessor is chosen so requires, be persons who are Europeans or Americans.

<sup>1</sup> *Narain*, (1914) 36 All. 481.

<sup>2</sup> *Tirumal Reddi*, (1901) 24 Mad. 523, 536, 537-38.

<sup>3</sup> *Jayaram*, (1901) 25 Bom. 694, 3 Bom. L. R. 274; *Bastiano*, (1890) 15 Bom. 514.

<sup>4</sup> *Babu Lal*, (1898) 21 All. 106.

<sup>5</sup> *Tirumal Reddi*, sup.

<sup>6</sup> *Man Singh*, (1913) 85 All. 570.

<sup>7</sup> *Jaisukh*, (1920) 43 All. 125; *Ram Lal*, (1893) 15 All. 136

**COMMENT.**—The accused, whether Indian or European, shall be tried with assessors, who, if the accused so claims, shall all be of his nationality. The claim as to status must be made before the committing Magistrate (*vide* ss. 528A, 528B.)<sup>1</sup>

**285. (1)** If in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself,<sup>1</sup> and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

**(2)** If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors.

**COMMENT.**—Clause (1) constitutes an Exception to s. 284 and is confined in its operation only to cases where the assessor himself is prevented from attending the trial by reason of some physical disability, or voluntarily absents himself; it does not contemplate a case where the Judge discharges one of the assessors on the ground that the assessor is disqualified from acting as an assessor because of his having personal knowledge about some facts in issue in the case.<sup>2</sup>

The trial should commence with the requisite number of assessors and at least one of them should be present throughout the trial and give his opinion.<sup>3</sup> Where in the course of a trial with three assessors, one died at an early stage, and later on another became too ill to attend, and finally the third assessor was obliged to retire during portion of the address of the pleader for the accused, it was held that the trial was without jurisdiction.<sup>4</sup> Similarly, where the trial commenced practically with only one assessor, though nominally there was a second present at the beginning of the trial, the proceedings were set aside and a new trial was ordered.<sup>5</sup>

**1. 'Absents himself.'**—When an assessor absents himself once he is to be considered to have been wholly absent. He cannot be allowed to take part afterwards.<sup>6</sup>

#### *DD.—Joint trials.*

**285A.** In any case in which an European or American is accused jointly with a person not being an European or American, or an Indian British subject is accused jointly with a person not being an Indian; and such European, Indian British subject or American is committed for trial before a Court of Session, he and such other person may be tried together, but if he requires to be tried in accordance with the provisions of section 275 or section 284A and is so tried, and the other person accused requires to be tried separately, such other person shall be tried separately in accordance with the provisions of this Chapter.

<sup>1</sup> See *Harendra*, (1924) 41 Cal. 980.

<sup>2</sup> *Sipattar Singh*, [1942] All. 183.

<sup>3</sup> *Tirumal Reddi*, (1901) 24 Mad. 523, 537-38.

<sup>4</sup> *Muhammad Mahmud Khan*, (1891) 18 All. 337.

<sup>5</sup> *Babu Lal*, (1898) 21 All. 106;

*Jayram*, (1901) 25 Bom. 694, 3 Bom. L. R. 274; *Bastiano*, (1890) 15 Bom. 514.

<sup>6</sup> *Messeruddin*, (1902) 6 C. W. N. 715; *Piso*, (1894) Unrep. Cr. C. 695, Cr. R. No. 24 of 1894.

*E.—Trial to Close of Cases for Prosecution and Defence.*

286. (1) When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Opening case for prosecution. Examination of witnesses. (2) The prosecutor shall then examine his witnesses.

COMMENT.—Sub-section (2).—The witnesses must be examined orally. It is not sufficient, even with the consent of the pleader for the defence, to put in the depositions taken before the committing Magistrate, and allow the witnesses to be cross-examined upon them.<sup>1</sup>

It is the duty of the Public Prosecutor to call and examine all material witnesses sent up to the Court of Session. If he thinks that a particular witness would not speak the truth, he should tender that witness for cross-examination.<sup>2</sup> If material witnesses are not produced the Court may draw an inference adverse to the prosecution.<sup>3</sup> The only legitimate object of a prosecution is to secure not a conviction, but that justice be done. The prosecution should not refuse to call and examine a witness merely because his evidence may be favourable to the defence.<sup>4</sup> Where a witness for the prosecution is not examined by the Crown, he is placed in the witness-box in order that the defence may have an opportunity of cross-examining him.<sup>5</sup>

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered<sup>1</sup> by the prosecutor and read as evidence.

Examination of accused before Magistrate to be evidence.

COMMENT.—This section refers only to the examination of the accused by or before the committing Magistrate. It does not refer to a confession under s. 164, *supra*. Such a confession may be proved and admitted in evidence.

1. 'Shall be tendered.'—It is not optional with the prosecutor to tender in evidence the examination of the accused recorded under s. 342. It must be put in.<sup>6</sup>

288. The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII<sup>1</sup> may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes<sup>2</sup> subject to the provisions of the Indian Evidence Act, 1872.<sup>3</sup>

COMMENT.—Under this section the Sessions Judge has the discretion to treat the evidence of a witness duly recorded by the committing Magistrate as substantive evidence in the case. Where a witness retracts or contradicts in the Sessions Court his original statement, the Court must determine which is the true version and act upon it.<sup>7</sup>

The counsel for the accused is not entitled to refer to the depositions given before the committing Magistrate for the purpose of contradicting the witnesses

<sup>1</sup> *Subba*, (1885) 9 Mad. 88.

<sup>2</sup> *Tulla*, (1885) 7 All. 904.

<sup>3</sup> *Dhunno Bazi*, (1881) 8 Cal. 121; *Muhamamad Yunus*, (1922) 50 Cal. 318, 326.

<sup>4</sup> *Durga*, (1898) 16 All. 84, F.B.

<sup>5</sup> *Mavsang*, (1909) 11 Bom. L. R. 3162; *Girish Chunder*, (1879) 5 Cal. 614; *Stanton*, (1892) 14 All. 521.

<sup>6</sup> *Rama Tevan*, (1892) 15 Mad. 352.

<sup>7</sup> *Nga Nyein*, (1932) 11 Ran. 4.

before the Sessions Court, without drawing their attention to the alleged contradictions in their previous depositions and giving them an opportunity of explaining the same.<sup>1</sup>

1. 'Duly recorded in the presence of the accused under Chapter XVIII.'—The accused is entitled to have an opportunity to cross-examine a witness before his evidence can be used against him. If the accused had no opportunity to cross-examine the witnesses, the depositions of these could not be admitted in evidence.<sup>2</sup>

The section does not apply unless the depositions have been taken in the presence of the accused.<sup>3</sup>

2. 'Be treated as evidence in the case for all purposes.'—Such evidence will be treated exactly on the same footing as other evidence in the case, i.e. as substantive evidence of all facts therein deposed to.<sup>4</sup> It stands on the same footing as any other evidence before the Court of Session, and is to be considered as proper material on which the verdict or a finding may be given. Whether any portion or the whole of the evidence thus admitted is entitled to credit, and if so, to such a degree that a conviction may be based on it wholly or in part, are questions for the jury, assessors, or the Judge, but they are in no way affected by the section.<sup>5</sup> But the Sessions Judge must be satisfied that the prior statement was true and that the evidence given before him was false.<sup>6</sup> The Patna High Court has held that there must be evidence which will show that the evidence given before the Magistrate should be preferred to and substituted for that given before the Sessions Judge.<sup>7</sup> The previous statement of a witness recorded under s. 164 may be treated as corroboration under s. 157 of the Evidence Act of the witness's deposition admitted in evidence under this section.<sup>8</sup> The Nagpur High Court has dissented from this view and held that it is not necessary that there should be corroboration of the statement otherwise.<sup>9</sup>

3. 'Subject to the provisions of the Indian Evidence Act.'—The effect of these words is that if the evidence before the Magistrate was irrelevant or inadmissible under the Evidence Act, it is not admissible under this section.<sup>10</sup> They are intended to prevent the admission of irrelevant evidence which may have been inadvertently recorded by the committing Magistrate.<sup>11</sup> But they do not limit the purposes for which the evidence may be used. The evidence is to be treated as evidence for all purposes,<sup>12</sup> without having been specifically put to the witness.<sup>13</sup>

289. (1) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

<sup>1</sup> *Zawar Rahman*, (1902) 31 Cal. 142, F.B.

<sup>2</sup> *Sagal*, (1893) 21 Cal. 642.

<sup>3</sup> *Alimuddin*, (1895) 23 Cal. 361; *Gulabu*, (1913) 35 All. 260.

<sup>4</sup> *Maruti*, (1921) 46 Bom. 97, 23 Bom. L. R. 820; *Dwarka Kurmi*, (1906) 28 All. 683; *Tulli*, (1924) 47 All. 276; *Rakhe*, (1925) 6 Lah. 171; *Amir Zaman*, (1925) 6 Lah. 199; *Mohammad Sarwar*, [1943] Lah. 397; *Abdul Gani*, (1925) 53 Cal. 181; *Fakira*, (1937) 64 I. A. 148, 39 Bom. L. R. 966, [1937] Bom. 711.

<sup>5</sup> *Dwarka Kurmi*, sup.

<sup>6</sup> *Bachula Peda Somadu*, (1923) 47 Mad. 232.

<sup>7</sup> *Nebti Mandal*, (1939) 19 Pat. 399; *Jehal Teli*, (1924) 3 Pat. 781.

<sup>8</sup> *Mathura Tewari*, (1929) 8 Pat. 625; *Velliah Kone*, (1922) 45 Mad. 766; *Manar Ali*, (1933) 60 Cal. 1339;

<sup>9</sup> *Doda Bahadur*, [1942] Kar. 299.

<sup>10</sup> *Parmanand*, [1941] Nag. 110.

<sup>11</sup> *Jehal Teli*, sup.; *Bihari*, (1926) 49 All. 251.

<sup>12</sup> *Rano*, [1944] Kar. 75.

<sup>13</sup> *Fakira*, (1937) 64 I. A. 148, 39 Bom. L. R. 966, [1937] Bom. 711.

<sup>14</sup> *Mohammad Sarwar*, supra.

(2) If he says that he does<sup>o</sup> not, the prosecutor may sum up his case; and, if the Court considers that there is no evidence<sup>1</sup> that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(3) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(4) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.<sup>2</sup>

COMMENT.—This section marks the close of the case for the prosecution.

Sub-section (2).—1. 'There is no evidence.'—The words in sub-sections (2) and (3) are not to be read as meaning "no satisfactory, trustworthy or conclusive evidence." If there is evidence the trial must go on to its close.<sup>3</sup>

Where there is no evidence against the accused, the Judge ought to charge the jury for an acquittal and not leave the jury to say whether the accused is guilty or not.<sup>3</sup> If the Judge, after the prosecution case is closed, comes to the conclusion that, assuming that the jury believe every word of the prosecution evidence, nevertheless they will not be justified in convicting, then he is bound in law to say so and to direct the jury that in law they must bring in a verdict of not guilty, and he ought not in such a case to leave the matter to the jury.<sup>3</sup>

Sub-section (4).—It is the function of the jury to determine whether the evidence is true, and if the Judge thinks that the prosecution evidence, if true, will lead to a conviction, then he is bound to leave the case to the jury. The direction given by the Judge to the jury, under sub-s. (2) of this section when he considers that there is no evidence, that the accused committed the offence, to return a verdict of not guilty, is binding on the jury and must be followed by them, whether they agree with the Judge's view or not, and any other verdict returned by the jury must be set aside.<sup>4</sup>

2. 'The Court shall call on the accused to enter on his defence.'—This is not a mere formality, but is an essential part of a criminal trial, and an omission to do so occasions a failure of justice and is not cured by s. 537.<sup>5</sup>

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and

• Defence.

making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

<sup>1</sup> *Vajiram*, (1892) 16 Bom. 414; 43 Bom. L. R. 245.  
<sup>2</sup> *Munna Lal*, (1898) 10 All. 414.

<sup>3</sup> *Greedhary*, (1867) 7 W. R. (Cr.) 39 (57).

<sup>4</sup> *Tokarsi Narsi*, (1940) 43 Bom. L. R. 238, F.B.; *Dawood Hasham*, (1940)

<sup>5</sup> *Tokarsi Narsi*, sup.; *Dawood Hasham*, sup.; *Quadrat*, [1939] All. 871.

<sup>6</sup> *Imam Ali Khan*, (1895) 23 Cal. 252.



**COMMENT.**—Every accused person may of right be defended by a pleader (s. 340, *infra*). A written defence may be put in.

**291.** The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance;<sup>1</sup> but he shall not, except as provided in sections 211 and 281, be entitled of right<sup>2</sup> to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

**COMMENT.**—1. ‘If such witness is in attendance.’—The accused is entitled to call such person and examine him as his witness.<sup>1</sup>

2. ‘Shall not... be entitled of right.’—The accused is entitled to have any witnesses named in the list which he delivers to the Magistrate summoned and examined;<sup>2</sup> but he is not entitled to have witnesses not named by him before the Magistrate summoned at the Sessions trial. But the Judge can summon such witnesses if he thinks proper.<sup>3</sup>

**Prosecutor’s right of reply.** **292.** The prosecutor shall be entitled to reply<sup>1</sup>—

(a) If the accused or any of the accused adduces any oral evidence; or

(b) with the permission of the Court, on a point of law; or

(c) with the permission of the Court, when any document which does not need to be proved is produced by any accused person after he enters on his defence:

Provided that, in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced.

**COMMENT.**—The prosecutor has a right of reply—

(1) if any oral evidence is adduced on behalf of any accused; or

(2) with the permission of the Court

(a) on a point of law; or

(b) when any document which needs no proof is produced by an accused after he enters on his defence. The reply shall be restricted to comment on the document, unless the Court otherwise permits.

1. ‘Reply.’—The word “reply” means “reply generally on the whole case.” It does not mean that the prosecutor is to sum up as to such of the accused as do not call evidence, and to reply only on the evidence adduced by the others.<sup>4</sup>

Clause (a).—If the accused or any of the accused adduces any oral evidence the prosecutor is entitled to reply. The right of reply depends on the accused adducing oral evidence in defence after the close of the prosecution case.

Merely putting in documents through a witness for the prosecution in the course of cross-examination does not give the prosecution the right of reply.<sup>5</sup>

The counsel for the accused is entitled to be heard by an oral speech and not by a written address. The written address cannot form part of the record if taken in substitution of an oral speech.<sup>6</sup>

<sup>1</sup> *Bikao Khan*, (1889) 16 Cal. 610.

<sup>2</sup> *Fatuzzi*, (1920) 47 Cal. 758.

<sup>3</sup> *Rajah of Kanit*, (1886) 8 All.

668.

<sup>4</sup> *Sadanand Narayan*, (1894) 18 Bom. 304.

<sup>5</sup> *Abdullah Sharfati*, (1909) 11 Bom.

L. R. 177; *Bachattar Singh*, (1931)

13 Lah. 172.

<sup>6</sup> *Vinayak Bhalkhande*, (1928) 30

Bom. L. R. 1530, 53 Bom. 119.

Clause (c).—The reply is to be restricted to the document produced by any accused person.

293. (1) Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

(2) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

COMMENT.—This section provides for the view of the scene of the offence by the jury or assessors. Section 539B provides for the view of the place by Judges and Magistrates.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Jury or assessors to attend at adjourned sitting.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day; and subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

#### *F.—Conclusion of Trial in Cases tried by Jury.*

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury,<sup>1</sup> summing up the evidence for the prosecution and defence,<sup>2</sup> and laying down the law<sup>3</sup> by which the jury are to be guided.

COMMENT.—This section provides that the Judge shall charge the jury after all the evidence on both sides has been taken and the counsel or pleaders for both the prosecution and the accused have finished their addresses to the jury.<sup>1</sup> Where the provisions of this section are neglected a new trial may be ordered on the ground of misdirection.<sup>4</sup>

<sup>1</sup> *Public Prosecutor v. Abdul Ha-meed*, (1912) 36 Mad. 585; *Lyme*, (1923) 4 Lah. 382.

<sup>2</sup> *Imam Ali Khan*, (1895) 23 Cal. 252

If a juror expresses his opinion clearly regarding the guilt or innocence of an accused person before delivery of the charge to the jury, the jury is discharged and a fresh trial with a fresh jury is held.<sup>1</sup>

1. 'The Court shall proceed to charge the jury.'—It is mandatory upon the Judge to charge the jury. That is, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are guided.

The Judge is bound to record the heads of the charge to the jury in such a form and with sufficient fullness to enable the appellate Court to satisfy itself that all points of law were properly explained to the jury (s. 367, *infra*).<sup>2</sup>

It is not necessary that the charge to the jury should be delivered extempore. Reading out of a written charge does not violate any of the provisions of the section and render the verdict invalid on the ground of misdirection.<sup>3</sup>

2. 'Summing up the evidence for the prosecution and defence.'—The object of a summing up is to enable the Judge to place before the jury the facts and circumstances of the case both for and against the prosecution so as to help them in arriving at a right decision upon the points which arise for their consideration.<sup>4</sup> Summing up does not mean that the Judge should give merely a summary of the evidence. He must marshal the evidence so as to bring out the lights and the shades and the probabilities and improbabilities in order to give proper assistance to the jury who are required to decide which view of the facts is true.<sup>5</sup> It is the duty of the Judge to give a narrative of the case, and to place the facts and the evidence in a clear manner before the jury so as to enable them to grasp the details and to come to a right decision.<sup>6</sup> A proper summing up is understood to be a full and distinct statement of the evidence on both sides, with such advice as to the legal bearing of that evidence and the weight which properly attaches to the several parts of it, as a sound judicial discretion would suggest.<sup>7</sup> The Judge cannot omit any matters favourable to the accused on the ground that they have been elaborately discussed by counsel.<sup>8</sup>

3. 'Laying down the law.'—Under s. 298 the Judge has to decide all questions of law arising in the trial. It is the duty of the Judge to call the attention of the jury to the different elements constituting the offence and to deal with the evidence by which it is proposed to make the accused liable, and failure to do so amounts to misdirection.<sup>9</sup> Mere reference to sections of the Penal Code defining the offences, or merely reading those sections, is not a sufficient explanation of the law.<sup>10</sup>

The fact that pleaders or counsel on either side have addressed the jury and explained the law does not absolve the Judge from his duty of explaining it.<sup>11</sup> The responsibility of laying down the law for the guidance of the jury rests entirely with

<sup>1</sup> *Bideshi alias Govind*, (1936) 12 Luck. 170.

<sup>2</sup> *Panchu Das*, (1907) 34 Cal. 698.

<sup>3</sup> *Motiram*, [1942] Nag. 775.

<sup>4</sup> *Khajiruddin Sonar*, (1925) 53 Cal. 372, 376.

<sup>5</sup> *Enayet Karim*, (1984) 62 Cal. 337; *Golak Biharee Takal*, [1938] 1 Cal. 292; *Israr Husain*, (1941) 17 Luck. 128.

<sup>6</sup> *Mira Gajbar*, (1903) 6 Bom. L. R. 81.

<sup>7</sup> *Fattechand Vastachand*, (1868) 5

B.H.C. (Cr. C.) 85, 96; *Enayat Husain*, (1926) 40 All. 209; *Abdul Gani*, (1925) 53 Cal. 181.

<sup>8</sup> *Malgouda*, (1902) 27 Bom. 644, 4 Bom. L. R. 683; *Faktra*, (1915) 40 Bom. 220, 17 Bom. L. R. 1059.

<sup>9</sup> *Taju Pramanik*, (1898) 25 Cal. 711; *Mari Valayan*, (1906) 30 Mad. 44; *Israr Husain*, (1941) 17 Luck. 128.

<sup>10</sup> *Abbas Penda*, (1898) 25 Cal. 736; *Muhammad Yunus*, (1922) 50 Cal. 318.

<sup>11</sup> *Magan Das*, (1902) 29 Cal. 379.

the Judge.<sup>1</sup> The jury should take the law from the Judge. They are not entitled to resort to a commentary on the law during their consultation.<sup>2</sup> What a Judge says to a jury upon the law is an absolute and binding direction upon them.<sup>3</sup>

**Misdirection.**—A verdict will not be set aside on the ground of misdirection unless there is a failure of justice (s. 537).

**298. (1)** In such cases it is the duty of the Judge—

(a) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(b) to decide upon the meaning and construction of all documents given in evidence at the trial;

(c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact,<sup>1</sup> or upon any question of mixed law and fact, relevant to the proceeding.

#### ILLUSTRATIONS.

(a) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(b) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

**COMMENT.**—This section deals with the duty of a Judge; the next section deals with the duty of a jury.

**Clause (a).**—This clause refers to several sections of the Evidence Act, notably ss. 4 *et seq.*, 141-143, 146, 151, 152.

It is for the Judge to decide whether the evidence adduced before him is admissible or not; the credibility of the evidence is to be left to the jury.<sup>4</sup> It is the duty of the Judge to prevent the production of inadmissible evidence whether it is or is not objected to by the parties.<sup>5</sup>

It is primarily the duty of the Judge to decide whether a confession is voluntarily made in order to determine its admissibility into evidence. It is then the duty of the jury to find whether it is true and for that purpose to go afresh into the question whether it is voluntarily made.<sup>6</sup>

<sup>1</sup> *Magan Das*, (1902) 29 Cal. 379.

<sup>2</sup> *Bharmia*, (1895) 6 Bom. L. R. 258.

<sup>3</sup> *Nim Chand Mookerjee*, (1878) 20 B. R. (Cr.) 41.

<sup>4</sup> *Abbas Peada*, (1898) 25 Cal. 736;

*Amiruddin Ahmed*, (1917) 45 Cal. 557.

<sup>5</sup> *Panchkowi Dutt*, (1924) 52 Cal.

67.

<sup>6</sup> *Government of Bombay v. Dashrath*, (1944) 47 Bom. L. R. 146, F.B.

**Sub-section (2).—1.** ‘May...express to the jury his opinion upon any question of fact, etc.’—The Judge is entitled to express his opinion freely and emphatically when it seems to him to be necessary to do so provided that he warns the jury that his opinion is in no way binding on them and that it is the jury’s opinion on the facts of the case alone which matters.<sup>1</sup> If he expresses his opinion on any question of fact or upon any question of mixed law and fact, he should be most careful to explain to the jury that it is for them to decide all questions of fact.<sup>2</sup> He must let the jury consider the facts for themselves, and form their own opinion as to the value to be attached to the evidence of the several witnesses and the proper inference that ought to be drawn from the evidence as a whole.<sup>3</sup>

**Duty of jury.**

**299.** It is the duty of the jury—

(a) to decide which view of the facts is true<sup>1</sup> and then to return the verdict<sup>2</sup> which under such view ought, according to the direction of the Judge, to be returned;<sup>3</sup>

(b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(c) to decide all questions which according to law are to be deemed questions of fact;

(d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

#### ILLUSTRATIONS.

(a) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

**COMMENT.**—This section lays down that the jury’s function is to decide all questions of fact.

**Clause (a).—1.** ‘Which view of the facts is true.’—That is the view taken by the prosecution which leads to the conclusion of the accused’s guilt, or the view which is set up on the accused’s behalf and which would make him innocent.<sup>4</sup>

**2.** ‘Verdict.’—‘Verdict’ is the finding of the jury. By ‘verdict’ should be understood the collective opinion of the jury as a body, arrived at after mutual consultation, and ascertained and announced by the foreman.<sup>5</sup>

**3.** ‘Which under such view ought...to be returned.’—These words enable the jury to ignore the graver charges on which the accused is tried, and find him guilty of a lesser one on the evidence.<sup>6</sup>

<sup>1</sup> *Ratnasabapathy Goundan v. Public Prosecutor, Madras*, (1936) 55 Mad. 904.

<sup>2</sup> *Bepin Biswas*, (1884) 10 Cal. 970; *Panchu Das*, (1907) 34 Cal. 698; *Natabar Ghose*, (1908) 35 Cal. 531.

<sup>3</sup> *Scott*, (1935) 13 Ran. 141.

<sup>4</sup> *Mahomed Humayoon Shah*, (1874) 21 W. R. (Cr.) 72.

<sup>5</sup> *Public Prosecutor v. Abdul Hammed*, (1912) 36 Mad. 585.

<sup>6</sup> *Satoo Sheikh*, (1865) 3 W. R. (Cr.) 41.

**300.** In cases tried by jury, after the Judge has finished his charge, Retirement to the jury may retire to consider their verdict.  
consider.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

**COMMENT.**—The jury retires to the jury room, provided in every Court, for purposes of deliberation.

When a jury are considering their verdict, it is wrong for a minority, for the sake of the appearance of uniformity, or to avoid the appearance of eccentricity, or to save time and trouble, or for any reason other than that of an honest conviction that the view of the majority is right, to appear to agree with the majority so that a verdict is returned not in real accordance with their view.<sup>1</sup>

The verdict of the jury is vitiated if one of them after retirement to consider the verdict speaks to or holds any communication with a person not a juror. It is not necessary for the Court to inquire into the nature of the subject-matter of the conversation or communication.<sup>2</sup>

**301.** When the jury have considered their verdict, the foreman Delivery of ver- shall inform the Judge what is their verdict, or what dict. is the verdict of a majority.

**COMMENT.**—If the verdict is not clear the Judge may ask the jury questions for the purpose of ascertaining what the verdict is (s. 303, *infra*). Section 280 makes the foreman the mouthpiece of the jury. Section 302 gives the Judge a discretion to require the jury to reconsider their verdict, if it is not an unanimous one. Under s. 304, a wrong verdict delivered by accident or mistake may be corrected by the jury before or immediately after it is recorded.

**302.** If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a Procedure where jury differ. period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

**COMMENT.**—If the jury is unanimous their verdict must be received, unless it be contrary to law; the Court is not competent in such a case to direct it to reconsider its verdict.<sup>3</sup> If the Judge disagrees with the verdict he may proceed under s. 307 and submit the proceedings to the High Court.<sup>4</sup>

If the jury is not unanimous the Judge may ask them to retire for further deliberation. But this must be done before the verdict is delivered and not after.<sup>5</sup>

The Judge should not inquire on which side the majority is, so that, if it coincides with his own opinion, he may accept it. A further consideration might result in the majority then existing becoming the minority.<sup>6</sup>

**303.** (1) Unless otherwise ordered by the \* Verdict to be given on each Court, the jury shall return a verdict on all the charge. charges on which the accused is tried, and the

<sup>1</sup> *Mills*, [1939] 2 K. B. 90.

<sup>2</sup> *Beni Madhab Kundu*, (1918) 46 Cal. 207.

<sup>3</sup> *Government of Bengal v. Mahaddi*, (1880) 5 Cal. 871; *Madhavrao*, (1894) 19 Bom. 785; *Devji Govindji*, (1895) 20 Bom. 215.

<sup>4</sup> *Kondiba*, (1904) 28 Bom. 412, 6 Bom. L. R. 361.

<sup>5</sup> *Bharmia*, (1895) 6 Bom. L. R. 258.

<sup>6</sup> *Hurry Churn Chuckerbutty*, (1883) 10 Cal. 140.

Judge may question jury.

Questions and answers to be recorded.

Judge may ask them such questions as are necessary to ascertain what their verdict is.

(2) Such questions and the answers to them shall be recorded.

**COMMENT.**—This section enables the Judge where the verdict is ambiguous to ask the jury such questions as are necessary to ascertain what the jury really meant by the verdict.<sup>1</sup> Where the verdict is free from ambiguity, the Judge is not competent to put questions to the jury, but must accept it.<sup>2</sup>

A Judge is not obliged to accept an absurd verdict. It is not part of his duty to accept and interpret a verdict of an unintelligible character. He may re-charge the jury on specific points.<sup>3</sup>

A Judge ought not to put any questions to any of the jurors as to his reasons for the verdict he has given.<sup>4</sup>

**Sub-section (2).**—The questions put to the jury and the answers given must be recorded in the exact language used and not merely their substance.<sup>5</sup>

**304.** When by accident or mistake a wrong verdict is delivered, the Amending verdict. jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

**COMMENT.**—This section contemplates cases where the verdict delivered is not in accordance with what was really intended by the jury. It has no application where there is no accident or mistake in the delivery of the verdict; and the mistake lies in the misunderstanding of the law by the jury. If such a mistake results in an erroneous verdict, it can be corrected only by the Judge disagreeing with the jury and referring the case under s. 307 to the High Court.<sup>6</sup>

Where the verdict of the jury is clear and there is no accident or mistake in delivering it, it is a proper verdict and cannot be amended under this section; and a second verdict delivered by the jury after being questioned by the Judge cannot be allowed to stand as an amendment.<sup>7</sup> There is no power in the trial Court or in the jury to reconsider the verdict except under the provisions of this section.<sup>8</sup>

**305.** (1) When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

(2) When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

<sup>1</sup> *Abdul Hamid*, (1905) 32 Cal. 759; *Eran Khan*, (1923) 50 Cal. 658; *Public Prosecutor v. Abdul Hameed*, (1912) 36 Mad. 585.

<sup>2</sup> *Kondiba*, (1904) 28 Bom. 412, 6 Bom. L. R. 361; *Dada Ana*, (1889) 15 Bom. 452; *Siranadu*, (1907) 30 Mad. 469.

<sup>3</sup> *Hamid Ali Haldar*, (1927) 57 Cal. 61.

<sup>4</sup> *Bharmia*, (1895) 6 Bom. L. R.

258; *Subbiah Thevan v. Assistant Sessions Judge of Tinnevely*, (1926) 43 Mad. 744.

<sup>5</sup> *Jhubboo Mahton*, (1882) 8 Cal. 739.

<sup>6</sup> *Kondiba*, sup.

<sup>7</sup> *Chunilal*, (1898) Unrep. Cr. C. 982, Cr. R. No. 44 of 1896; *Madhavrao*, (1894) 19 Bom. 735.

<sup>8</sup> *Lyme*, (1923) 4 Lah. 382.

Discharge of jury in other cases. (3) If the Judge disagrees with the majority, he shall at once discharge the jury.

(4) If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

**COMMENT.**—Sub-section (1).—In a trial before the High Court the jury consists of nine persons (s. 274). The Judge shall give judgment in accordance with the opinion of the jury—

(1) if they are unanimous in their opinion, or

(2) when as many as six are of one opinion and the Judge agrees with them.

The Judge shall discharge the jury—

(1) if he disagrees with the majority, or

(2) if there are not six jurors who agree in opinion.

In a trial before a Court of Session, the verdict of a jury may be that of any majority.

**306.** (1) When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

(2) If the accused is acquitted, the Judge shall record judgment of acquittal, if the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 562, pass sentence on him according to law.

**COMMENT.**—When the verdict of the jury has been delivered, the Judge is bound to say and record whether he agrees with the verdict or not.<sup>1</sup>

This section leaves the discretion of the Judge absolutely uncontrolled but the Courts ought not to interfere with the unanimous verdict of a jury unless the verdict is palpably wrong.<sup>2</sup> Where a Judge dissents from an unanimous finding of a jury given in accordance with law, the only procedure open to him to follow is that laid down in s. 307.<sup>3</sup>

**307.** (1) If in any such case the Judge disagrees<sup>1</sup> with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which any accused person<sup>2</sup> has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case in respect of such accused person to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed, and in such case, if the accused is further charged<sup>3</sup> under the provisions of section 810, shall proceed to try him on such charge as if such verdict had been one of conviction.

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which such accused has been tried,<sup>4</sup> but he may either remand such accused to custody or admit him to bail.

<sup>1</sup> *Chand Bagdee*, (1867) 7 W. R. (Cr.) 6.

<sup>2</sup> *Government of Bengal v. Mahaddi*, (1880) 5 Cal. 871.



(3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict such accused of any offence of which the jury could have convicted him upon the charge framed and placed before it, and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

**COMMENT.**—This section enables the Judge to interpose by refusing to record and act upon the verdict of the jury if he thinks that it would cause a failure of justice; and in such a case to refer the proceedings to the High Court.

This section leaves the referring of a case to the High Court entirely to the discretion of the Judge, for it is only (1) if he disagrees with the verdict of the jury; and (2) is clearly of the opinion that it is necessary, for the ends of justice, to submit the case to the High Court, that he should do so.<sup>1</sup> This discretion should always be exercised when the Judge thinks that the verdict is not supported by the evidence,<sup>2</sup> or that it is clearly and manifestly wrong.<sup>3</sup> This is the only way in which the miscarriage of justice by a perverse verdict of a jury can be remedied by the High Court. It is not necessary for a Judge before making a reference to be satisfied that the verdict is perverse. It is sufficient that he should be clearly of opinion that the reference is necessary in the interests of justice.<sup>4</sup>

An appeal lies to the High Court in a trial by jury on a matter of law (s. 418). This section enables the High Court to consider the evidence on facts, unless there has been appeal by the Government under s. 417.

**Scope.**—This section does not enable the Judge to refer a case tried by assessors.<sup>5</sup> It makes no distinction between cases of acquittal and conviction.<sup>6</sup>

**Sub-section (1).—1. 'Disagrees.'**—The word 'disagrees' means that the Judge thinks it necessary to express disagreement. If he does not so think, his duty is to act as laid down in s. 306, namely to give judgment according to the verdict.<sup>7</sup>

**2. 'Any accused person.'**—When the Judge accepts the verdict of the jury in respect of some of the accused but not others, he need only refer the cases of the latter to the High Court.<sup>8</sup>

**3. 'And in such case, if the accused is further charged, etc.'**—These words enable the Judge to complete the trial by taking evidence as to previous conviction before referring the case to the High Court.

**Sub-section (2).—4. 'Charges on which such accused has been tried.'**—This means charges on which the accused has been tried by jury and not those charges which were tried by the Judge with the aid of assessors.<sup>9</sup>

<sup>1</sup> *Irya Doddappa*, (1904) 6 Bom. L. R. 599; *Eran Khan*, (1923) 50 Cal. 658; *Debendra Nath Ray*, [1943] 1 Cal. 417.

<sup>2</sup> *Guruvadu*, (1890) 13 Mad. 343.

<sup>3</sup> *Dada Ana*, (1889) 15 Bom. 452;

*Devji Govindji*, (1895) 20 Bom. 215;

*Swarnamoyee Biswas*, (1913) 41 Cal.

621; *Dhananjay Raha*, (1923) 51 Cal.

347; *Jamalti Fakir*, (1923) 51 Cal. 160.

<sup>4</sup> *Sakhawat*, [1937] Nag. 277;

*Rameshwar Singh*, (1937) 16 Pat. 415.

<sup>5</sup> *Kalidas*, (1898) 8 Bom. L. R.

599; *Vyankatasing*, (1907) 9 Bom. L.

R. 1057.

<sup>6</sup> *Dagadu*, (1932) 36 Bom. L. R.

183.

<sup>7</sup> *Afsar Shaikh*, [1937] 2 Cal. 694.

<sup>8</sup> S. O. R. See *Badar Ali*, (1914)

42 Cal. 789.

<sup>9</sup> *Ganga Ram*, [1940] All. 365.

Sub-section (3).—This sub-section casts upon the High Court the duty of both the Judge and the jury.<sup>1</sup> The High Court will form and act upon its own view of what the evidence in its judgment proves, but in doing so, it will give due weight to the opinion of the Judge and the verdict of the jury.<sup>2</sup> As a general rule, more weight should be given to the opinion of the Judge who has been trained to weigh and appreciate evidence and must give reasons for his opinion than to the opinion of the jury who are a body of laymen, unaccustomed to weigh or appreciate evidence and who give no reasons for their opinion.<sup>3</sup> The High Court will not interfere with the verdict of the jury where the evidence is of such a character that the jury as reasonable men can possibly take the view they have taken.<sup>4</sup> The High Court will interfere if the verdict of the jury is either perverse, or manifestly wrong, or wholly unreasonable, or definitely contrary to evidence, or not supported by any evidence, or induced by a misdirection or non-direction in the Judge's charge to the jury, otherwise it will confirm the verdict of the jury.<sup>5</sup> The verdict is regarded as perverse, if the Court comes to the conclusion on a perusal of the evidence that no jury could really have entertained any reasonable doubt as to the guilt of the accused. The High Court will not interfere with the verdict merely because on a perusal of the evidence the Judges think that they would have come to a different conclusion from that at which the jury arrived.<sup>6</sup> Where the High Court disagrees with the verdict but considers that it is not manifestly perverse, the Court will direct a new trial or acquit, but where the Court concludes that the jury's verdict is perverse, it will dispose of the case by acquitting or convicting the accused as the case may be.<sup>7</sup>

The Allahabad High Court has drawn a distinction between a verdict of not guilty and a verdict of guilty. In the former case it is the practice not to reverse such verdict unless it is perverse or palpably wrong, in the latter case even if the verdict is not perverse or palpably erroneous the High Court will act according to its own appreciation of the evidence and acquit an accused person in respect to whose guilt it entertains grave doubts.<sup>8</sup>

The whole case is open to the High Court when hearing a reference, and in dealing with the reference the High Court exercises all the powers which it exercises on appeal.<sup>9</sup> The High Court may convict the accused even on a charge on which the Judge agrees with the finding of not guilty by the jury.<sup>10</sup>

Where some of the accused were convicted, the others being acquitted, and the foreman of the jury was subsequently tried and convicted of having taken a bribe in connection with the trial, it was held that the verdict of guilty could not be sustained.<sup>11</sup>

<sup>1</sup> *Khanderav*, (1875) 1 Bom. 10.

<sup>2</sup> *Iwari Saho*, (1887) 15 Cal. 269;  
*Chandra Krishna*, (1908) 10 Bom. L. R. 632; *Annada Charan Thakur*, (1909) 36 Cal. 629.

<sup>3</sup> *Ram Chandra Roy*, (1927) 55 Cal. 879.

<sup>4</sup> *Har Mohan Das*, (1927) 54 Cal. 708.

<sup>5</sup> *Shankar Ganpat*, (1944) 47 Bom. L. R. 654; *Veerappa Goundan*, (1928) 51 Mad. 956, F.B.; *Maharaj Bihari*, (1928) 3 Luck. 456.

<sup>6</sup> *Bai Lali*, (1932) 34 Bom. L. R.

896; *Jogi Kar*, (1929) 57 Cal. 1183; *Chheda*, (1933) 8 Luck. 439.

<sup>7</sup> *Dattatraya Sadasheo Karve*, [1940] Nag. 894.

<sup>8</sup> *Bansi*, [1938] All. 483.

<sup>9</sup> *Shankar Balkrishna*, (1922) 47 Bom. 31, 24 Bom. L. R. 484; *Rafi Mian*, (1932) 11 Pat. 609.

<sup>10</sup> *Dwarkanath Goswami*, (1932) 60 Cal. 427, distinguishing *Profulla Kumar Mazumdar*, (1922) 50 Cal. 41; *Hasrat Mohani*, (1922) 24 Bom. L. R. 885.

<sup>11</sup> *Hafez Molla*, (1933) 60 Cal. 751.

*G.—Re-trial of Accused after Discharge of Jury.*

**308.** Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

**COMMENT.**—This section enables the Judge to exercise his power after the return of the verdict of the jury.

A jury may be discharged before returning a verdict under ss. 282 and 283 and, in case of a trial before a High Court, under s. 305.

*H.—Conclusion of Trial in Cases tried with Assessors.*

**309. (1)** When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up<sup>1</sup> the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally<sup>2</sup> on all the charges on which the accused has been tried, and shall record such opinion, and for that purpose may ask the assessors such questions as are necessary to ascertain what their opinions are.<sup>3</sup> All such questions and the answers to them shall be recorded.

**(2)** The Judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.<sup>4</sup>

**(3)** If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 562, pass sentence on him according to law.

**COMMENT.**—The object of this section is to enable the Sessions Judge in long or intricate cases to place the evidence in an intelligible form, so as to assist the assessors in arriving at a reasonable conclusion.<sup>5</sup>

1. 'May sum up.'—Section 297 says the Judge "shall sum up": this section only says "may sum up". This section does not require that the heads of the summing up should be recorded, just as under s. 367 the heads of the charge to the jury must be recorded by the Judge himself.

2. 'Require each of the assessors to state his opinion orally.'—Each assessor should state his opinion orally<sup>2</sup> and separately.<sup>3</sup> If the opinion is taken in writing the trial is not vitiated until miscarriage of justice is shown.<sup>4</sup> Assessor should be invited and encouraged by the Judge to state briefly the grounds of their opinion as well as the result.<sup>5</sup>

3. 'May ask the assessors such questions as are necessary to ascertain what their opinions are.'—The Judge may ask such questions as are necessary to ascertain the opinions of the assessors. But he can only question them after they have delivered their opinions orally and he has recorded such opinions.<sup>6</sup> A trial is altogether bad if the assessors are not asked and are apparently not allowed to give their opinions in the case.<sup>7</sup>

<sup>1</sup> *Shadulla Howladar*, (1888) 9 Cal. 875.

<sup>2</sup> *Lalit Chandra*, (1911) 39 Cal. 119.

<sup>3</sup> *Shadulla Howladar*, sup.

<sup>4</sup> *Begu*, (1925) 53 I. A. 191, 27 Bom. L. R. 707, 6 Lah. 226.

<sup>5</sup> *Mahadu Tukaram*, (1900) 2 Bom. L. R. 322.

<sup>6</sup> *Nazimuddin*, (1912) 40 Cal. 163; *Appaya*, (1923) 25 Bom. L. R. 1818.

<sup>7</sup> *Bai Nani*, (1905) 7 Bom. L. R. 781.

The Judge must take the opinions of all the assessors and not of some only. If he does not take the opinions of all, the trial is vitiated.<sup>1</sup>

4. 'Shall not be bound to conform to the opinions of the assessors.'—The assessors, like the jury, are not judges of questions of fact, so as to bind the Judge. Their opinion must be treated with due regard, but it is the Judge who is to decide the case on the facts as well as law.<sup>2</sup>

The Judge cannot order a re-trial after the opinions of the assessors are taken and recorded. He is bound to give his judgment.<sup>3</sup>

. I.—*Procedure in case of Previous Conviction.*

310. In the case of a trial by a jury or with the aid of assessors when the accused is charged with an offence and further charged that he is by reason of a previous conviction liable to enhanced punishment or to punishment of a different kind for such subsequent offence, the procedure prescribed by the foregoing provisions of this Chapter shall be modified as follows, namely:—

(a) Such further charge shall not be read out in Court and the accused shall not be asked to plead thereto, nor shall the same be referred to by the prosecution, or any evidence adduced thereon unless and until,

(i) he has been convicted of the subsequent offence, or

(ii) the jury have delivered their verdict, or the opinions of the assessors have been recorded, on the charge of the subsequent offence.

(b) In the case of a trial held with the aid of assessors, the Court may, in its discretion, proceed or refrain from proceeding with the trial of the accused on the charge of the previous conviction.

COMMENT.—This section lays down a special form of trial of the issue of liability to enhanced punishment in consequence of previous conviction. It is expressly made applicable to trials before the Court of Session only, and does not apply to trials before a Magistrate.<sup>4</sup> In the latter case s. 255A applies.

The object of this section in prohibiting the proof of previous conviction to be put in until the accused is convicted, is to prevent the accused from being prejudiced at the trial.<sup>5</sup>

Reading the previous conviction during the trial amounts to misdirection.<sup>6</sup>

Section 75 of the Indian Penal Code provides for enhanced sentences in case of certain offences of which an accused person is previously convicted.

Clause (b).—This clause is intended to avoid the inconvenience which may arise in cases tried by assessors whose opinion is not binding on the Judge. In any trial held with the aid of assessors, the Court is given a discretion to proceed or refrain from proceeding with the trial of the accused on the charge of the previous conviction.

311. Notwithstanding anything in the last foregoing section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the

<sup>1</sup> *Ramakrishna Reddi*, (1908) 28 Mad. 508.

<sup>2</sup> *Shankar Balwant*, (1912) 14 Bom. L. R. 710.

<sup>3</sup> *Nathu Rawo*, (1915) 17 Bom. L. R.

<sup>4</sup> *Dehri Sonar*, (1923) 50 Cal. 367.

<sup>5</sup> *Maung E Gyi*, (1923) 1 Ran. 520.

<sup>6</sup> *Roshun*, (1880) 5 Cal. 768.

provisions of the Indian Evidence Act, 1872.

**COMMENT.**—This section serves as a proviso to the previous one. It says that evidence of previous conviction may be given if it is relevant under the provisions of the Evidence Act, that is, where it is necessary to prove guilty knowledge or intention (s. 14) or to rebut evidence of good character produced by the accused (s. 54).

*J.—List of Jurors for High Court, and summoning jurors for that Court.*

**312.** The High Court may prescribe the number of persons whose names shall be entered at any one time in the special jurors' list :

Provided that no definite number of Europeans or of Americans or of Indians shall be so prescribed.

**313.** (1) The Clerk of the Crown<sup>1</sup> shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

(a) a list of all persons liable to serve as common jurors ; and

(1.) a list of persons liable to serve as special jurors only.

(2) Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

(3) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

(4) The Provincial Government may exempt any salaried servant of the Crown from serving as a juror.

(5) The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said list as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

**COMMENT.**—1. 'Clerk of the Crown'.—See s. 4 (e).

**314.** (1) Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the Official Gazette before the fifteenth day of April next after their preparation.

(2) Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the Official Gazette before the first day of May next after their preparation.

(3) Copies of the said lists shall be affixed to some conspicuous part of the court-house.

**315.** (1) Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in the town which is the usual place of sitting of each High Court, as many of those who are liable to serve on special or common juries respectively as the Clerk of the Crown considers necessary.

(2) No person shall be so summoned more than once in six months unless the number cannot be made up without him.

(3) If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

**316.** Whenever a High Court has given notice of its intention to hold sittings at any place outside the town which is the usual place of sitting of such High Court, for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed<sup>1</sup> for summoning jurors to the Court of Session.

**COMMENT.**—See ss. 335-336 as to a trial outside the presidency-towns.

1. 'In the manner hereinafter prescribed.'—See s. 326.

**317. (1)** In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army or Air Force resident within ten miles of its place of sitting as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

(2) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent official duty, or for any other special official reason.

**318.** Any person summoned under section 315, section 316 or section 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable, by order of the Judge, to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment for a term not exceeding six months in the civil jail until the fine is paid:

Provided that the Court may in its discretion remit any fine or imprisonment so imposed.

**COMMENT.**—See s. 295 as to attendance of jury or assessors at adjourned sittings.

**K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.**

**319.** All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside, or,

Liability to serve as jurors or assessors.

if the Provincial Government, on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed.

**COMMENT.**—The fact that a man's age exceeds sixty or is less than twenty-one years will operate as an exemption in his favour, but is not a ground for a challenge as a personal disqualification.

**320.** The following persons are exempt from liability<sup>1</sup> to serve  
Exemptions. as jurors or assessors, namely:—

(a) officers in civil employ superior in rank to a District Magistrate;

(aa) members of any Legislature in British India;

(b) salaried Judges;

(c) Commissioners and Collectors of Revenue or Customs;

(d) police-officers and persons engaged in the Preventive Service in the Customs Department;

(e) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(f) persons actually officiating as priests or ministers of their respective religions;

(g) persons in Her Majesty's Army, Navy or Air Force, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(h) surgeons and others who openly and constantly practise the medical profession;

(i) legal practitioners (as defined by the Legal Practitioners' Act, 1879) in actual practice;

(j) persons employed in the Post-Office and Telegraph Departments;

(k) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641<sup>a</sup>;

(l) other persons exempted by the Provincial Government from liability to serve as jurors or assessors.

**COMMENT.**—1. 'Exempt from liability.'—There is a clear distinction between exemption and disqualification. This section deals with cases of exemption, whereas s. 278 deals with cases of disqualification. Those exempted under this section may be capable, but they are not liable, and they should therefore be excluded from the list (s. 321) without any claim for exemption being made.

2. 'Code of Civil Procedure, sections 640 and 641.'—The corresponding sections of the present Code of Civil Procedure are ss. 132 and 133.

**321. (1)** The Sessions Judge, and the Collector of the district or such other officer as the Provincial Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (b) to (h), both inclusive.

(2) The list shall contain the name, place of abode and quality or business of every such person; and, if the person is an European or an American, the list shall mention the race to which he belongs.

**COMMENT.**—Jurors as a class and assessors as a class should be well qualified in regard to property, character or education. They should be chosen from persons of an independent condition in life, men of judgment and experience.<sup>1</sup>

**322.** Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the court-houses of the District Magistrate and of the District Court, and extracts therefrom in some conspicuous place in the town or towns in or near which the persons named in the extract reside.

**323.** To every such copy or extract shall be sub-joined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the sessions court-house, and at a time to be mentioned in the notice.

**324. (1)** For the hearing of such objections the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror, or as an assessor, or who may establish his right to any exemption from service given by section 820 and insert the name of any person omitted from the list whom they deem qualified for such service.

**(2)** In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

**(3)** A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

**(4)** Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

**(5)** Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

**Annual revision of list.** **(6)** The list so prepared and revised shall be again revised once in every year.

**(7)** The list so revised shall be deemed a new list and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

**325.** In the case of any district for which the Provincial Government has declared that the trial of certain offences shall, if the Judge so direct, be by special jury, the Sessions Judge and the Collector of such district or other officer as aforesaid shall prepare, in addition to the revised list hereinbefore prescribed, a special list containing the names of such jurors as are borne on the revised list and are, in the opinion of such Sessions Judge and Collector or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, cha-

<sup>1</sup> *Ram Dutt Chowdhry*, (1874) 23 W. R. (Cr.) 35.



racter or education, fit persons to serve as special jurors: Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury.

**326.** The Sessions Judge shall ordinarily, seven days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list or the said special list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial and including, where any accused person is an European or an American, as many Europeans or Americans as may be required for the purpose of choosing jurors or assessors for the trial.

(2) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

(3) Where the accused requires and is entitled to be tried under the provisions of section 275, there shall be chosen by lot, in the manner prescribed by or under section 276, from the whole number of persons returned the jurors who are to constitute the jury until a jury containing the proper number of Europeans or Europeans and Americans or of Indians, as the case may be, has been obtained:

Provided that, in any case in which the proper number of Europeans or Americans cannot otherwise be obtained, the Court may, in its discretion for the purposes of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 820.

(4) Where, under the proviso to sub-section (3), the Court proposes to summon as a juror any person in His Majesty's Army, the provisions of section 817 shall apply in like manner as they apply for the purpose of the summoning of military jurors for a trial under section 816.

**COMMENT.**—The object of sub-section (2) is to secure an impartial trial by rendering impossible any intentional selection of jurors to try a particular case, and an accused has a right to claim to be tried by a jury chosen with strict regard to all the safeguards provided therein to secure perfect impartiality.

In a murder case, where the number of jurors summoned was fourteen, nine of whom appeared and were chosen by lot, the trial was held to be not bad by reason of the fact that only fourteen jurors had been summoned in contravention of the provisions of s. 274 and this section.<sup>1</sup>

**327.** The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors.

<sup>1</sup> *Erman Ali*, (1930) 57 Cal. 1228, F.B.

jurors or assessors for a whole session oppressive or whenever for other reasons such direction is found to be necessary.

**328.** Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

**329.** When any person summoned to serve as a juror or assessor is in the service of the Crown or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears on the representation of the head of the office in which he is employed that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

Court may excuse attendance of juror or assessor.

Court may relieve special jurors from liability to serve again as jurors for twelve months.

List of jurors and assessors attending.

**330. (1)** The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

**(2)** The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury, direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months.

**331. (1)** At each session the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

**(2)** Such list shall be kept with the list of the jurors and assessors as revised under section 824.

**(3)** A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

**332. (1)** Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court, after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding one hundred rupees.

**(2)** Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

**(3)** For good cause shown, the Court may remit or reduce any fine so imposed.

**(4)** In default of recovery of the fine by attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

**COMMENT.**—A similar provision is made by s. 318 for the non-attendance or absence of a juror in a trial before a High Court.

No appeal lies from an order fining an assessor or juror for non-attendance. For good cause shown, the Court may remit or reduce any fine so imposed [subs. (3)].

*L.—Special Provisions for High Courts.*

333. At any stage of any trial before a High Court under this Code, before the return of the verdict, the Advocate General to General may, if he thinks fit, inform the Court stay prosecution. on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

COMMENT.—When the Advocate General desires to stay prosecution he enters a *nolle prosequi* and the accused is discharged. *Nolle prosequi* (to be unwilling to prosecute) is an entry on the record of a statement that the prosecutor will proceed no further. The entry puts an end to the prosecution and prevents the issue of further process therein. It has not the effect of judgment on the merits; and it is not equivalent to a pardon, nor to an acquittal, for the purposes of a plea of *autrefois acquit*.

A *nolle prosequi* puts an end to the indictment on which the accused is brought before the Court, and he cannot be proceeded against on the same charges, but the rule does not affect the legality or otherwise of any proceedings taken thereafter by the Crown against him.<sup>1</sup>

The power which an Advocate General, entering a *nolle prosequi* in a trial before a High Court, exercises under this section does not depend on the consent of the Court, which a public prosecutor has to obtain when acting under s. 404 but belongs to rights and privileges of a very different character which the Advocate General owns by virtue of his appointment.<sup>2</sup>

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

335. (1) The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Provincial Government may direct.

(2) But it may, from time to time, with the consent of the Provincial Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

(3) Such officer as the Chief Justice directs shall give notice beforehand in the Official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

336. [Place of trial of European British subjects.] Omitted by s. 20 of Act XII of 1923.

<sup>1</sup> *Jitendra Nath Bose*, (1925) 52 Cal. 590. But see *Sheikh Idoo*, (1912)

40 Cal. 71.

<sup>2</sup> *Madar Gazi*, (1932) 60 Cal. 233.

## CHAPTER XXIV.

## GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337. (1) In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years, or any offence under any of the following sections of the Indian Penal Code, namely, sections 216A, 369, 401, 485 and 477A, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or any Magistrate of the first class may, at any stage of the investigation or inquiry into, or the trial of the offence,<sup>1</sup> with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned<sup>2</sup> in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure<sup>3</sup> of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof :

Provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the District Magistrate shall exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof.

(1A) Every Magistrate who tenders a pardon under sub-section (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record :

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

(2) Every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.

(2A) In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial<sup>4</sup> to the Court of Session or High Court, as the case may be.

(3) Such person, unless he is already on bail, shall be detained in custody until the termination of the trial.

(4) [Omitted by s. 86 of Act XVIII of 1923].

COMMENT.—This section empowers certain specified Magistrates (where the offence is under inquiry or trial, the District Magistrate or the Magistrate making the inquiry or holding the trial; where it is under investigation, the Magistrate having jurisdiction with the sanction of the District Magistrate to pass a judicial order the effect of which is that a person supposed to have been directly concerned

in, or privy to, the offence under inquiry, who chooses to accept the pardon tendered by the said order, can give his evidence as a witness in the case, with the knowledge and assurance that the order will operate as a bar to his own subsequent prosecution or trial for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.<sup>1</sup>

Government can grant pardon under s. 401.

Where pardon has been tendered the prosecution is not entitled thereafter to withdraw under s. 494 from the prosecution of the accused to whom pardon is tendered and examine him as a witness in the case.<sup>2</sup> In a case against six persons under ss. 120B and 471 of the Penal Code, conditional pardons were tendered to two of the accused by the District Magistrate and were accepted by them. The Public Prosecutor then withdrew under s. 494 of the Criminal Procedure Code from the prosecution of these two accused and examined them as witnesses. It was held that the pardon having been tendered under this section, the prosecution was bound to proceed in the manner prescribed by that section and could not, after such tender of pardon, ignore that section and proceed under s. 494.<sup>3</sup>

**Object.**—The object of this section is to obtain true evidence of offences by the grant of pardon to accomplices so as to prevent the escape of the offenders from punishment for lack of evidence.<sup>4</sup>

1. 'Investigation or inquiry into, or the trial of offence.'—Where the offence is under inquiry or trial, the District Magistrate or the Magistrate making the inquiry or holding the trial can grant pardon. Where the offence is under investigation, a Magistrate can grant pardon only with the sanction of the District Magistrate.

2. 'Any person supposed to have been directly or indirectly concerned.'—The word "supposed" must be taken merely as intended to exclude the case of a man who has actually been convicted of the crime, and not the case of a man who, although admitted to be a party to the crime, is unconvicted.<sup>5</sup> No pardon can be tendered to a person who has been actually convicted, or whose complicity in the crime is not admitted by himself.

It is not necessary that the person to whom a pardon is tendered should himself be charged with an offence. All that is required is that he should be supposed to have been directly or indirectly concerned in, or privy to, an offence with which another person is charged.<sup>6</sup>

3. 'Full and true disclosure.'—The approver must make a full and true disclosure before the committing Magistrate as well as before the Sessions Court. He cannot withdraw it after making it once.<sup>7</sup> The tender of pardon to an approver has to precede and not to follow on the making of full and true disclosure.<sup>8</sup>

The tender of a pardon does not prevent the prosecution from proceeding against an approver as an accused where he has not performed the conditions of the pardon.<sup>9</sup> This section does not enable the Court of Session to deal with an

<sup>1</sup> *Har Prasad*, (1922) 45 All. 226, 229.

<sup>2</sup> *Faqir Singh*, (1938) 65 I. A. 388, 40 Bom. L. R. 1254, [1938] Lah. 628; *Ramsaran*, [1945] Nag. 515.

<sup>3</sup> *Faqir Singh*, *ibid.*

<sup>4</sup> *Alagirisami*, (1910) 33 Mad. 514, 517.

<sup>5</sup> *Kallu*, (1884) 7 All. 160; *Bhagya*, (1895) Unrep. Cr. C. 750.

<sup>6</sup> *Kashiram*, (1922) 24 Cr. L. J. 566, [1923] AFR. (N) 248.

<sup>7</sup> *Kothia*, (1906) 80 Bom. 611, 8 Bom. L. R. 740; *Alagirisami*, *sup.*

<sup>8</sup> *Horilal*, [1941] Nag. 872.

<sup>9</sup> *Dagdo*, (1921) 46 Bom. 120, 28 Bom. L. R. 839.

approver, in case he does not comply with the conditions of his pardon and forfeits it, without a fresh enquiry and commitment by a Magistrate.<sup>1</sup>

A person who has been granted pardon must be released if he has fulfilled the condition of the pardon.

A pardon would cover not only the offence then under trial, but any other offence relating to the same transaction which might be subsequently charged, that is, any other offence relating to the same facts as constituted that offence or any part of that offence. It is immaterial whether all the offences were triable by the same Court.<sup>2</sup>

Sub-section (1A).—The failure on the part of the Magistrate to record his reasons for tendering pardon to the approvers is merely an irregularity which does not affect the right of the accused to be tried by the Sessions Judge.<sup>3</sup>

Sub-section (2).—It is imperative that the person who has accepted tender of pardon must be examined as a witness in the Court of the committing Magistrate and at the subsequent trial of every person tried for the same offence provided it is possible for the Crown to produce him. Non-compliance with the provisions of this section renders the trial illegal.<sup>4</sup> Though an approver is *particeps criminis* as soon as a pardon is granted to him with a view to obtaining his evidence, he becomes a witness *qua* the case in which he is to be examined, and continues to assume that role up to the time when his failure to comply with the condition causes a forfeiture of the pardon.<sup>5</sup>

Sub-section (2A).—4. 'Commit him for trial.'—Every case in which a pardon is tendered (i.e., where there is an approver) must be committed for trial to the Court of Session, provided the Magistrate is satisfied that a *prima facie* case has been made out against the accused.<sup>6</sup> When a Magistrate has tendered pardon, the trial must not be by another Magistrate, but by the High Court or Sessions Court. The Magistrate can discharge him under s. 209 if he thinks that a *prima facie* case has not been made out.<sup>7</sup>

Sub-section (3).—For the purpose of ascertaining the nature of the custody of an approver, his competency as a witness does not divest him of the character of an accused person until by fulfilment of his undertaking he earns and secures his discharge; and he must therefore be detained in similar custody as the other accused persons.<sup>8</sup> He cannot be detained in police custody.<sup>9</sup> Custody means judicial custody and not police custody.<sup>10</sup> The approver is not discharged until the judicial proceedings pending against the accused are finished.<sup>11</sup> The approver cannot be detained till the period of appeal expires after the conviction of the accused.<sup>12</sup>

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been

Power to direct tender of pardon.

\* <sup>1</sup> *Nana Amrita*, (1934) 36 Bom. L. R. 1211.

<sup>2</sup> *Ganga Charan*, (1888) 11 All. 79

<sup>3</sup> *Fauquir Singh*, (1988) 65 I. A. 288, 40 Bom. L. R. 1254, [1938] Lah. 628.

<sup>4</sup> *Mahla*, (1929) 11 Lah. 230.

<sup>5</sup> *Khairati Ram*, (1931) 12 Lah.

<sup>6</sup> *Fauquir Singh*, (1934) 16 Lah. 594.

<sup>7</sup> *Fauquir Singh*, sup.

<sup>1</sup> *Nana Amrita*, Sup.

<sup>2</sup> *Kundan Lal*, (1931) 12 Lah. 604, 628.

<sup>3</sup> *Khairati Ram*, sup.

<sup>4</sup> *Dan Bahadur Singh*, [1943] All. 1 289; *Khairati Ram*, (1931) 12 Lah. 635.

<sup>5</sup> *Intiya Salabat Khan*, [1912] 37 Bom. 146, 14 Bom. L. R. 897.

<sup>6</sup> *Sultan Ahmad*, (1924) 62 Cal. 430.

directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

**COMMENT.**—The preceding section deals with tender of pardon by Magistrates: this section applies to tender of pardon by Courts of Session and High Courts. Pardon under this section can be tendered not only during a trial, but also before a trial.

A pardon may be tendered to an accused tried with others, notwithstanding that he has pleaded guilty, though not to a person who has pleaded guilty and been convicted on his plea.<sup>1</sup>

**339. (1)** Where a pardon has been tendered under section 337 or section 338, and the Public Prosecutor certifies that in his opinion any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter :

Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made ; in which case it shall be for the prosecution to prove that such conditions have not been complied with.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him at such trial.

(3) No prosecution for the offence of giving false evidence<sup>1</sup> in respect of such statement shall be entertained without the sanction of the High Court.

**COMMENT.**—Under this section a certificate of the Public Prosecutor is a condition precedent to the prosecution of an approver to whom a tender of pardon has been made, but who has failed to comply with the condition of the tender.<sup>2</sup>

The approver breaks the condition of pardon if he wilfully conceals anything essential or gives false evidence.<sup>3</sup> The onus is on the prosecution to prove that the approver has forfeited his pardon.<sup>4</sup>

**Proviso.**—If the accused has forfeited his pardon, he cannot be tried along with other accused.

**Sub-section (2).**—Where an approver has been tendered a pardon under this section and he has accepted the tender, his statement can be legally recorded under s. 164 of the Code on affirmation. Such a statement will be admissible in evidence against him at a subsequent trial, after forfeiture of the pardon, for an offence in respect of which the pardon was tendered.<sup>5</sup> A confession of a person recorded before pardon was accepted by him is not admissible in evidence under this provision. Such a confession is admissible under the general provisions of s. 164.<sup>6</sup>

<sup>1</sup> *Kallu*, (1884) 7 All. 160.

<sup>2</sup> *Maria Basappa*, (1924) 26 Bom. L. R. 1240 ; *Ah*, (1924) 5 Lah. 379.

<sup>3</sup> *Kothia*, (1908) 30 Bom. 611, 8 Bom. L. R. 740.

<sup>4</sup> *Ibid.* ; *Bala*, (1901) 3 Bom. L. R.

271, 25 Bom. 675 ; *Shashi Rajbanshi*, (1914) 42 Cal. 856 ; *Kullan*, (1908) 32 Mad. 173 ; *Khtaki*, (1917) 39 All. 305.

<sup>5</sup> *Rambharose*, [1944] Nag. 274, F.B.

<sup>6</sup> *Miral*, [1948] Kar. 285.

**Sub-section (3).—1.** 'Prosecution for .... giving false evidence.'—The object of this sub-section is to safeguard a person whose pardon has been withdrawn against a prosecution for false evidence, unless the propriety of such prosecution has been considered and determined by the High Court. The discretion vested in the High Court is to be exercised with extreme caution.<sup>1</sup>

An application to the High Court for sanction to prosecute an approver for giving false evidence should be by motion on behalf of the Crown in open Court.<sup>2</sup>

**Procedure in trial of person under section 330.**      **339A. (1)** The Court trying under section 389 a person who has accepted a tender of pardon shall—

(a) if the Court is a High Court or Court of Session, before the charge is read out and explained to the accused under section 271, sub-section (1), and

(b) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and the jury, or the Court with the aid of the assessors, or the Magistrate, as the case may be, shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.

**COMMENT.**—This section lays down that when a person to whom a pardon is tendered is being tried he shall, at the commencement of the proceedings, be asked whether he raises the plea that he has complied with the conditions on which the pardon was granted, and, if he does so plead, the Court shall record a finding on the point and, if it finds that the conditions have been complied with, shall acquit the accused.<sup>3</sup> Failure to comply with the imperative provisions of the section vitiates the trial.<sup>4</sup>

Right of person against whom proceedings are instituted to be defended and his competency to be a witness.

**340. (1)** Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.<sup>1</sup>

(2) Any person against whom proceedings are instituted in any such Court under section 107, or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings.

**COMMENT.**—This section not only contemplates that the accused should be at liberty to be defended by a pleader at the time the proceedings are actually going on, but also implies that he should have a reasonable opportunity, if in custody of the police, of getting into communication with his legal adviser for the purpose

<sup>1</sup> *Mathura*, (1933) 56 All. 288.

<sup>2</sup> *Manick Chandra Sarkar*, (1897) 24 Cal. 492; *Madiga*, (1908) 32 Mad. 47.

<sup>3</sup> Report of the Joint Committee (1922); *Alt*, (1924) 5 Lah. 379.

<sup>4</sup> *Horlil*, [1940] Nag. 668.



of preparing his defence.<sup>1</sup> The accused should be given access to legal advice even while he is in police custody.<sup>2</sup>

1. 'Pleader.'—See s. 4 (r), *supra*. A mukhtar is included in the definition of "pleader".

An advocate who is accused of a criminal offence or is a party in a civil Court is fully entitled to conduct his own defence or his own case. But an advocate who is accused with others of a criminal offence cannot appear at the trial as counsel for his co-accused. Counsel cannot appear in the same matter both as counsel and party.<sup>3</sup>

Sub-section (2).—An accused person cannot offer himself as a witness, but under this sub-section persons against whom proceedings are instituted under Chapters X, XI, XII, XXXVI, or under s. 552 of the Code, may be examined as witnesses in such proceedings.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial;<sup>1</sup> and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.<sup>2</sup>

COMMENT.—This section is intended to provide for cases in which the accused is deaf and dumb and cannot be made to understand the proceedings or, from ignorance of the language of the country and the want of an interpreter, is unable to understand or make himself understood. Where the accused is of unsound mind, the Court must proceed under Chapter XXXIV.<sup>4</sup> If the accused is able to understand the proceedings, though he is deaf and dumb, the provisions of this section do not apply.<sup>5</sup>

1. 'The Court may proceed with the inquiry or trial.'—The Court must proceed to the end of the trial and then report the result to the High Court if a conviction follows. A Magistrate cannot make a report in the midst of a trial.<sup>6</sup>

2. 'The proceedings shall be forwarded to the High Court with a report . . . and the High Court shall pass thereon such order as it thinks fit.'—The Magistrate cannot pass any sentence although he convicts the accused. He must submit the proceedings to the High Court. But there must be a finding by the Magistrate that *prima facie* an offence has been committed and the accused cannot be made to understand the proceedings. The High Court may pass such orders as it thinks fit. It may convict or discharge the accused, or direct a re-trial, or keep him in jail.<sup>7</sup> Where the accused being deaf and dumb cannot be made to understand the proceedings against him, and it becomes impossible to say that he knew the nature of the act committed or that he acted with dishonest intention therein, he must be acquitted or discharged.<sup>8</sup>

Where there are two accused and one of them though not insane is not able to understand the proceedings, the Magistrate can refer the proceedings of both

<sup>1</sup> *Llewellyn Evans*, (1926) 28 Bom. L. R. 1048, 50 Bom. 741.

<sup>2</sup> *Sundar Singh*, (1930) 12 Lah. 16.

<sup>3</sup> *Subramanya Sarma*, [1941] Mad. 1019.

<sup>4</sup> *Husen*, (1881) 5 Bom. 262.

<sup>5</sup> *Alla Dia*, (1928) 10 Lah. 566;

*Isso*, [1948] Kar. 326.

<sup>6</sup> *Deaf and Dumb Man*, (1902) 4, Bom. L. R. 825.

<sup>7</sup> *Somir Bowra*, (1899) 27 Cal. 368, 370; *Isso*, *sup.*

<sup>8</sup> *Monya*, (1902) 4 Bom. L. R. 298.

to the High Court. The High Court, has no jurisdiction to pass any order with regard to the accused who is able to understand the proceedings.<sup>1</sup>

**342. (1)** For the purpose of enabling the accused<sup>1</sup> to explain any circumstances appearing in the evidence against him,<sup>2</sup> the Court may, at any stage<sup>3</sup> of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined<sup>4</sup> and before he is called on for his defence.<sup>5</sup>

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(4) No oath shall be administered to the accused.

**COMMENT.**—This section empowers the Court to examine the accused after the evidence for the prosecution has been taken. The object of empowering the Court to examine the accused is to give him an opportunity of explaining any circumstances which may tend to incriminate him and thus to enable the Court, in case where the accused is undefended, to examine the witnesses in his interest.<sup>6</sup>

**Scope.**—The Madras High Court is of the opinion that the section does not apply to summons-cases though there is no objection to the Magistrate questioning the accused and in complicated cases it may be a desirable course to take.<sup>7</sup> The same is the view of the Rangoon High Court.<sup>8</sup> But the High Courts of Bombay,<sup>9</sup> Calcutta,<sup>10</sup> Allahabad,<sup>11</sup> Patna,<sup>12</sup> and Lahore<sup>13</sup> have held that the Magistrate is bound to examine the accused in a summons-case, and the omission to do so vitiates the trial.

This section must be read subject to the provisions of s. 205. Hence, where a Magistrate exercises the power given to him by s. 205 of dispensing with the personal attendance of the accused and permits him to appear by his pleader, the Magistrate is not bound to question the accused personally.<sup>14</sup>

The section applies to a summary trial<sup>15</sup> in a summons case<sup>16</sup> or a warrant

<sup>1</sup> *Trimbak Herlekar*, (1938) 40 Bom. L. R. 495.

<sup>2</sup> Report of the Select Committee, (1882); *Hossein Buksh*, (1880) 6 Cal. 90; *Shakur*, [1944] Mad. 304.

<sup>3</sup> *Ponnuasami v. Ramasamy*, (1928) 46 Mad. 758, F.B.

<sup>4</sup> *Nga La Gyi*, (1931) 9 Ran. 506, F.B.

<sup>5</sup> *Fernandez*, (1920) 45 Bom. 672, 22 Bom. L. R. 1040; *Gulabjan*, (1921) 46 Bom. 441, 23 Bom. L. R. 1203.

<sup>6</sup> *Bechu Lal Kayastha*, (1926) 54 Cal. 286; *Gulzari Lal*, (1922) 49 Cal. 1075.

<sup>7</sup> *Khacho Mal*, (1925) 27 Cr. L. J. 405, [1926] AIR (A) 358; *Sia Ram*, (1934) 57 All. 666.

<sup>8</sup> *Gulam Rasul*, (1921) 6 P. L. J. 174, 2 P. L. T. 890.

<sup>9</sup> *Muhammad Bakhsh*, (1922) 4 P. L. J. 230; *Mehr Khan v. Bakht Bhatti*, (1928) 10 Lah. 406.

<sup>10</sup> *Jaffar*, (1934) 36 Bom. L. R. 433.

<sup>11</sup> *Mahomed Hossain*, (1914) 41 Cal. 743; *Karam Din*, (1933) 15 Lah. 60.

<sup>12</sup> *Kondiba Balaji*, (1940) 42 Bom. L. R. 695; *Fernandez*, (1920) 22 Bom. L. R. 1040, 45 Bom. 672.

case.<sup>1</sup> It is not necessary, in such a trial, for the Court to record the questions put to the accused person or his answers.<sup>2</sup>

The section does not apply to proceedings under s. 488,<sup>3</sup> or to additional evidence taken at the instance of the appellate Court, though the accused may be questioned in regard to such additional evidence, but if he is not, there is no legal omission.<sup>4</sup>

The section applies to a trial before the Sessions Judge even when the accused has been questioned on the case generally by the committing Magistrate.<sup>5</sup>

1. 'Accused.'—Accused means the accused then under trial and under examination by the Court, and does not include an accused over whom the Court is exercising jurisdiction in another trial.<sup>6</sup>

2. 'Explain any circumstances .... in the evidence against him.'—The examination of the accused is for the purpose of enabling him to explain any circumstances appearing in evidence against him. Where there are several accused, each of them must be examined.<sup>7</sup> The Court in examining must avoid incriminating questions and questions in the nature of cross-examination.<sup>8</sup> The Court should not hold an inquisitorial proceeding if the accused prefers to be reticent.<sup>9</sup> The section cannot be used for the purpose of ascertaining what the accused's defence is. Questions put by the Court must be strictly limited to the purpose described in this section.<sup>10</sup> The accused ought not to be examined with a view to fill up a gap in the evidence for the prosecution.<sup>11</sup>

3. 'At any stage.'—The power to question the accused under the first part of this section is a discretionary power which the Court may exercise at any time during the trial or inquiry even before the framing of a charge.<sup>12</sup>

4. 'Shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, etc.'—It is the duty of the Court, before drawing an adverse inference against the accused on any point, to call his attention to it and ask for an explanation.<sup>13</sup> The word "shall" makes the duty imposed on the Court to question the accused generally on the case, after the witnesses for the prosecution have been examined and before he is called for his defence, mandatory, not discretionary.

The Bombay High Court has held in several cases that the omission to question the accused under this section is an illegality which vitiates the trial.<sup>14</sup> But

<sup>1</sup> *Mahomed Hossain*, (1914) 41 Cal. 748; *Sia Ram*, (1934) 57 All. 666.

<sup>2</sup> *Parsotim Das*, (1927) 6 Pat. 504; *Sia Ram*, *sup.*

<sup>3</sup> *Vithaldas*, (1928) 30 Bom. L. R. 957, 52 Bom. 768; *Mehr Khan v. Bakht Bhari*, (1928) 10 Lah. 406.

<sup>4</sup> *Narayan Keshav*, (1928) 30 Bom. L. R. 651, 52 Bom. 699; *Saiyid Mohi-uddin*, (1925) 4 Pat. 488.

<sup>5</sup> *Raju Ahitaji*, (1907) 9, Bom. L. R. 730.

<sup>6</sup> *Karamalki Gulamalki*, (1938) 40 Bom. L. R. 1092, [1939] Bom. 42.

<sup>7</sup> *Mussammal Ghasiti*, (1925) 6 Lah. 554.

<sup>8</sup> *Alimuddin Naskar*, (1924) 52 Cal. 522; *Faqir Singh*, (1928) 10 Lah. 228; *Jhabwala*, (1933) 55 All. 1040.

<sup>9</sup> *Prafullakumar Basu*, (1929) 57 Cal. 1074.

<sup>10</sup> *Hargobind Singh*, (1892) 14 All.

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<sup>11</sup> *Basanta Kumar Ghattak*, (1898) 26 Cal. 49; *Mohideen*, (1903) 27 Mad. 238; *Annabi*, (1915) 39 Mad. 449; *Mohan Singh*, (1920) 42 All. 522; *Bholanath*, (1928) 51 All. 313; *Dev Dyal*, (1922) 4 Lah. 55.

<sup>12</sup> *Genu Gopal*, (1929) 31 Bom. L. R. 1134.

<sup>13</sup> *Dwarkanath Varma*, (1933) 35 Bom. L. R. 507, 14 P. L. T. 305, P.C.; *Sangama Naicker*, (1936) 59 Mad. 622.

<sup>14</sup> *Basapa*, (1915) 17 Bom. L. R. 892, 45 Bom. 672; *Fernandez*, (1920) 22 Bom. L. R. 1040, 45 Bom. 672; *Gulabjan*, (1921) 23 Bom. L. R. 1203, 46 Bom. 441; *Gamadia*, (1925) 27 Bom. L. R. 1405, 50 Bom. 34; *Bhau Dharma*, (1928) 30 Bom. L. R. 385; *Genu Gopal*, (1929) 31 Bom. L. R. 1134.

recently it has held that every failure to comply with the provisions of the section does not necessarily vitiate the trial. If the Court is satisfied that the failure to comply with the strict terms of the section has caused no prejudice, it will not interfere. Such a case is covered by s. 537.<sup>1</sup> The defect of non-compliance with the provisions of this section is a mere irregularity and is cured by s. 537 unless the accused has been prejudiced thereby as held by the Allahabad High Court,<sup>2</sup> or unless there has been failure of justice as held by the Nagpur<sup>3</sup> and the Madras<sup>4</sup> High Courts and the Chief Court of Oudh.<sup>5</sup> Omission to question the accused on a criminal point, the point on which he has been convicted, necessarily involves a miscarriage of justice within the meaning of s. 537.<sup>6</sup>

The Bombay and the Calcutta High Courts have held that the provision of this section is for the benefit of the accused; and to enable him to obtain the full benefit of the section he must be examined after the cross-examination and re-examination if any of the prosecution witnesses are over.<sup>7</sup> If fresh prosecution witnesses are examined after the examination of the accused it is obligatory on the Magistrate to further examine the accused.<sup>8</sup> It is immaterial whether the examination of the accused takes place before or after the framing of the charge.<sup>9</sup>

The High Courts of Madras, Allahabad and Rangoon have held that the words "after the witnesses for the prosecution have been examined" mean when the prosecution has finished calling evidence and do not include the cross-examination and re-examination of the prosecution witnesses.<sup>10</sup> The Lahore High Court<sup>11</sup> has held that the proper time for the examination of the accused under this section is after the prosecution witnesses have been examined under s. 252. It is not necessary to examine the accused before the further cross-examination under s. 256 and it would be impossible to hold otherwise for very often the proceedings under s. 256 overlap the proceedings under s. 252.<sup>12</sup>

Where the accused leaves the case entirely in the hands of his legal adviser, no examination of the accused is necessary.<sup>13</sup>

Sub-section (2).—An accused person cannot be prosecuted for perjury by reason of any false answers that he may give. He cannot be prosecuted for making any defamatory statements according to the Allahabad High Court,<sup>14</sup> but he can be, according to the Bombay High Court.<sup>15</sup>

No presumption arises, *ipso facto*, from the silence of an accused person. The fact of silence may, with all the other circumstances of the case, be taken into

<sup>1</sup> *Kondiba Balaji*, (1940) 42 Bom. L. R. 695.

<sup>2</sup> *Sia Ram*, (1934) 57 All. 666.

<sup>3</sup> *Nana*, [1939] Nag. 686.

<sup>4</sup> *Annamalai*, [1940] Mad. 514; *Marudamuthu Padayachi v. Raghava Sastri*, (1934) 58 Mad. 427. The Rangoon High Court has held likewise: *U Ba Thein*, (1930) 8 Ran. 372; *Nga Po Min*, (1932) 10 Ran. 511.

<sup>5</sup> *Brij Lal*, (1936) 12 Luck. 24; *Bachu Lal*, (1936) 12 Luck. 263.

<sup>6</sup> *Bhagwandas*, [1942] Kar. 112.

<sup>7</sup> *Nathu Kasturchand*, (1924) 27 Bom. L. R. 105, 50 Bom. 42; *Genu Gopal*, (1929) 31 Bom. L. R. 1134; *Dibakanta Chatterjee v. Gour Gopal*, (1923) 50 Cal. 939; *Jumnona Christian*, (1922) 50 Cal. 308; *Masahar Ali*,

(1922) 50 Cal. 223; *Legal Remembrancer, Bengal v. Satish Chandra Roy*, (1924) 51 Cal. 924.

<sup>8</sup> *Bhau Dharma*, (1928) 30 Bom. L. R. 385.

<sup>9</sup> *Vishram*, (1930) 32 Bom. L. R. 596.

<sup>10</sup> *Varisai Rowther*, (1922) 46 Mad. 449, F.B.; *Bechu Chaube*, (1922) 45 All. 124; *Nga Hla U*, (1925) 3 Ran. 139. See *K. M. Subbaya Naidu*, (1929) 7 Ran. 470.

<sup>11</sup> *Mohammad Nawaz*, [1938] Lah. 603.

<sup>12</sup> *Gandhi Talaiya*, (1885) 2 Weir 405.

<sup>13</sup> *Murli Pathak*, (1927) 50 All. 169.

<sup>14</sup> *Bai Shanta v. Umrao*, (1925) 50 Bom. 162, 28 Bom. L. R. 1, F.B.

account in a proper case, but, even then, it must be clearly borne in mind that an accused person always has a right to remain silent if he wishes; and, the silence of the accused must never be allowed, to any degree, to become a substitute for proof by the prosecution of its case.<sup>1</sup>

Sub-section (3).—Under s. 287 the examination of the accused duly recorded by or before the committing Magistrate may be tendered by the prosecutor and read as evidence at the Sessions trial. It can also be used as evidence against him in any other trial.

Sub-section (4).—No oath can be administered to an accused person. This sub-section is restricted to an accused who is on trial in the proceeding to which the section is being applied.<sup>2</sup> The words "the accused" mean the accused then under trial and under examination by the Court.<sup>3</sup> This sub-section therefore does not prevent an accused person while still under trial from being examined on oath in a separate case.<sup>4</sup> When accused persons are tried separately, each one, though implicated in the same offence, is a competent witness at the trial of the other.<sup>5</sup> When an accused has pleaded guilty, he ceases *ipso facto* to be an accused person, still more so, when he has been convicted. This section has no application to him.<sup>6</sup>

Written statements of accused.—The Calcutta High Court has held that written statements of the accused do not take the place of the examination of the accused contemplated in this section.<sup>7</sup> The Bombay High Court is of the opinion that where the accused puts in a written statement in answer to a question by the Magistrate to state what he has to say, the omission by the Magistrate to question him orally is not an illegality.<sup>8</sup> There is no violation of the provisions of this section if an accused declines to answer questions put to him by the Magistrate and prefers to put in a written statement.<sup>9</sup> The Patna High Court has held that where the accused having heard the evidence for the prosecution and on being questioned by the Court in compliance with the provisions of this section in general terms indicates his intention of leaving his defence to his legal adviser by filing a written statement, the Court is neither bound nor entitled to question him further.<sup>10</sup>

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

COMMENT.—The effect of this section and the provisions of s. 342 (4) that no oath shall be administered to the accused, is to render it illegal for a Magistrate to convert an accused person into a witness except when a pardon has been lawfully granted under s. 337 or s. 338, or when the Public Prosecutor has withdrawn from the prosecution under s. 494.

In reading this section the provisions of ss. 24-29 of the Indian Evidence Act should be borne in mind.

<sup>1</sup> *Ghura*, [1941] All. 912.

<sup>2</sup> *Mahammad Yusuf*, (1931) 58 Cal. 1214; *Ghulam Muhammad*, (1922) 3 Lah. 46.

<sup>3</sup> *Durant*, (1898) 23 Bom. 213; *Govind Balwant Laghate*, (1916) 18 Bom. L. R. 266.

<sup>4</sup> *Tribeni*, (1898) 20 All. 426.

<sup>5</sup> *Akhoy Kumar Mookerjee*, (1917) 45 Cal. 720.

<sup>6</sup> *Mahammad Yusuf*, *sup.*

<sup>7</sup> *Amrita Lal Hazra*, (1915) 42 Cal. 957; *Bhagrandas*, [1942] Kar. 112.

<sup>8</sup> *Harjwan Vajji*, (1925) 28 Bom. L. R. 115, 50 Bom. 374.

<sup>9</sup> *Budhulal*, [1937] Nag. 288. In Oudh the practice of putting in such written statements has been denounced: *Mohammad Anis*, (1936) 12 Luck. 291.

<sup>10</sup> *Sahyanarayana*, (1943) 22 Pat. 681.

344. (1) If, from the absence of a witness, or any other reasonable cause,<sup>1</sup> it becomes necessary or advisable to postpone or adjourn the commencement of, or adjourn any proceedings. inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit,<sup>2</sup> for such time as it considers reasonable,<sup>3</sup> and may by a warrant remand the accused, if in custody :

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.<sup>4</sup>

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

*Explanation.*—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

**COMMENT.**—This section authorizes a Magistrate, for reasonable cause, to remand an accused person to jail without examining any witnesses. It relates to adjournment of proceedings in inquiries and trials and has nothing to do with the police investigation and contemplates a remand to jail and not to police custody.<sup>1</sup> The detention by the police is altogether different from the custody in which an accused person is kept under remand given under this section. The detention by the police under s. 167 cannot exceed in all fifteen days including one or more remands.<sup>2</sup> The custody under this section is quite different from the custody under s. 167. The custody under this section is intended for under-trial prisoners.<sup>3</sup>

1. 'Reasonable cause.'—Such as incompleteness of police investigation. A criminal Court may stay proceedings if a civil suit between the same parties and in respect of the same property is instituted.<sup>4</sup> Unless the finding of a civil Court will dispose of the point which has arisen in a criminal case, it is not expedient for a Magistrate to exercise his discretion in favour of adjournment or stay of the proceedings pending before him for the purpose of enabling him to have the benefit of the finding of the civil Court.<sup>5</sup>

2. 'Adjourn the same on such terms as it thinks fit.'—This clearly entitles the Court to award costs to the party who has been put to unnecessary expenses by the conduct of the other side.<sup>6</sup> This will be done in exceptional circumstances.<sup>7</sup> The costs are to be paid by the party applying for the adjournment. A Magistrate adjourning the hearing of a case owing to an application for transfer of the case cannot award the costs of the adjournment.<sup>8</sup>

<sup>1</sup> *Krishnaji*, (1879) 23 Bom. 32;

*Rama*, (1902) 4 Bom. L. R. 878.

<sup>2</sup> *Engadu*, (1887) 11 Mad. 98,

<sup>3</sup> *Nagendra Nath*, (1923) 51 Cal. 402.

<sup>4</sup> *Raj Kumari Debi v. Bama Sundari Debi*, (1896) 23 Cal. 610; *Kanhaiya Lal v. Bhagwan Das*, (1925) 43 All. 60; *Motiram Jasmal*, [1942] Kar. 193.

<sup>5</sup> *Mansharam*, [1944] Kar. 392.

<sup>6</sup> *Mathura Prasad v. Basant Lal*, (1905) 28 All. 207; *Phandia*, [1945] Nag. 689.

<sup>7</sup> *Abdul Rahiman*, (1917) 42 Bom. 254, 20 Bom. L. R. 124.

<sup>8</sup> *Sorabji v. Erachshaw*, (1932) 34 Bom. L. R. 1106, 56 Bom. 636.

3. 'For such time as it considers reasonable.'—This section does not provide for an indefinite adjournment of a case. An adjournment *sine die* means an indefinite adjournment. The policy of the criminal law is to bring persons accused to justice as speedily as possible so that if they are found guilty they may be punished and if they are found innocent they may be acquitted and discharged. If the Government desire to put in a petition or request to the Court for an adjournment they can do so directly through the Public Prosecutor who is the proper officer to put the matter before the Court.<sup>1</sup>

Proviso.—4. 'Fifteen days at a time'—Fifteen days is the longest period for which an accused person may be remanded at a time by an order of the Magistrate.<sup>2</sup> Section 167 provides for fifteen days in all. The remand under that section cannot be more than fifteen days on the whole. Under this section the Magistrate may remand the accused to custody for a period not exceeding fifteen days at a time, and no limit is set to the number of such orders of remand.

345. (1) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table :—

Offence.	Sections of the Indian Penal Code applicable.	Persons by whom offence may be compounded.
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt .. .. .	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force ..	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour .. ..	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass .. .. .	447	The person in possession of the property trespassed upon.
House trespass .. .. .	448	
Criminal breach of contract of service.	496, 491, 492	The person with whom the offender has contracted.

<sup>1</sup> *Mahamad Ebrahim*, [1941] 2 Cal. 281.

<sup>2</sup> *Surkya*, (1868) 5 B. H. C. (Cr. C.) 81.

Offence.	Sections of the Indian Penal Code applicable.	Persons by whom offence may be compounded.
Adultery .. .. . Enticing or taking away or detaining with criminal intent a married woman. .	497 } 498 }	The husband of the woman.
Defamation .. .. . Printing or engraving matter, knowing it to be defamatory. Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	500 } 501 } 502 }	The person defamed.
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.
Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

(2) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table :—

Offence.	Sections of the Indian Penal Code applicable.	Person by whom offence may be compounded.
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing greivous hurt ..	325	Ditto.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	Ditto.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.



Offence.	Sections of the Indian Penal Code applicable.	Person by whom offence may be compounded.
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining a person in secret.	346	Ditto.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Cheating .. .. .	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	Ditto.
Cheating by personation .. ..	419	Ditto.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	Ditto.
Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.

Offence.	Sections of the Indian Penal Code applicable.	Persons by whom offence may be compounded.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may with the permission of the Court compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(5A) A High Court acting in the exercise of its powers of revision under section 489 may allow any person to compound any offence which he is competent to compound under this section.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(7) No offence shall be compounded except as provided by this section.

**COMMENT.**—Offences that may lawfully be compounded are those that are mentioned in this section. Offences other than those mentioned cannot be compounded. Offences punishable under laws other than the Penal Code are not compoundable.

The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification, not necessarily of a pecuniary character, to act as an inducement for his desiring to abstain from a prosecution, and this section provides that if the offence be compoundable, a composition shall have the effect of an acquittal.<sup>1</sup> Composition once made cannot be withdrawn. A lawful composition may be effected without the passing of any consideration or gratification, but there must be some arrangement between the parties settling their differences.<sup>2</sup> Only the persons named in the third column can legally compound an offence under this section. Any person may set the criminal law in motion, but it is only the person specified in the third column who can compound the offence. A wife filed a complaint against the accused for cheating her husband, but she compounded the offence and the Magistrate acquitted the accused. Subsequently, the husband filed another complaint against the accused who pleaded the

<sup>1</sup> *Murray*, (1898) 21 Cal. 103, 112;  
*J. John*, (1922) 45 All. 145.

*Haldayat Ali*, (1896) P. R. No. 9  
of 1896.

composition in bar of prosecution. It was held that the composition with the wife was not a valid one.<sup>1</sup>

A case may be compounded at any time before sentence is pronounced even whilst the Magistrate is writing the judgment.<sup>2</sup> A Magistrate cannot allow a case to be compounded after the record of the case is called for under s. 485 with a view to transfer the case,<sup>3</sup> because his jurisdiction to deal with the case ceases after the order calling for the papers is made.

Where the accused alleges that an offence is compounded, the onus is on him to show that there was a composition valid in law.

**Sub-section (1).—**No permission of the Court is necessary for compounding the offences mentioned in this sub-section. Under this sub-section, as soon as the parties have arrived at a compromise, the Magistrate has nothing more to do except to record a judgment of acquittal. And if one of the parties subsequently realises from the composition it is competent to the Court to take evidence as to the *factum* of the composition and to give effect to it, if it is found to have been entered into.<sup>4</sup> Where the parties to a compoundable offence compound it and produce a writing signed by them before the Court, the Court is bound to act upon it and is not at liberty to call upon the parties to prove that the case has been compounded.<sup>5</sup>

It is incompetent for any person, once having entered into a valid composition, to withdraw from it. A breach of the terms of the composition agreement may give rise to other remedies, but there can be no withdrawal.<sup>6</sup>

**Sub-section (2).—**In cases governed by this sub-section the Magistrate has to perform the judicial act of deciding whether in the interests of justice the parties should be allowed to compromise and, unless and until the Court has given its sanction, the so-called compromise arrived at between the parties outside the Court is of no legal effect and cannot be taken cognizance of by any Court dealing with the offence.<sup>7</sup> Such a compromise is ineffective and does not deprive the Court of its jurisdiction to try the case.<sup>8</sup>

**Sub-section (5).—**An offence which is compoundable may, with the leave of the Court in which it is pending for trial or on appeal, be compounded. When an appeal or revision is pending, the appellate Court can alone allow the offence to be compounded. This sub-section applies not only to an offence under sub-s. (1) but also to an offence falling under sub-s. (2).<sup>9</sup>

**Sub-section (5A).—**The High Court may allow the parties to a criminal case to compromise their disputes, even when such compromise is effected after the date of the final disposal of the case by the inferior Court competent to try it. It is not competent for the High Court to allow a compromise to be recorded unless the aggrieved person is actually before the High Court and has expressly recorded his consent to a compromise being recorded. The High Court will not ordinarily allow the compromise of an offence to be recorded under this sub-section unless some attempt towards compounding the offence was made before the trial Court passed orders in the case.<sup>10</sup>

<sup>1</sup> *Dajiba*, (1927) 29 Bom. L. R. 718, 51 Bom. 512.

<sup>2</sup> *Aslam Meah*, (1917) 45 Cal. 816.

<sup>3</sup> *Maruti Vithu*, (1924) 27 Bom. L. R. 350, 49 Bom. 533.

<sup>4</sup> *Naurang Rai v. Kidar Nath*, (1928) 9 Lah. 400; *Mahomed Kamal Rowther v. Pattani Inamthalla Sahib*, (1915) 39 Mad. 946; *Murray*, (1893) 21 Cal. 108, 112.

<sup>5</sup> *Gana Krishna Wahunj*, (1914) 16

Bom. L. R. 989.

<sup>6</sup> *Jhangloo Barai*, (1929) 52 All. 254.

<sup>7</sup> *Naurang Rai v. Kidar Nath*, *sup.*; *Kumaranasami Chetty v. Kuppuswami Chetty*, (1918) 41 Mad. 685.

<sup>8</sup> *Harswarup Chauhey*, [1940] Nag. 195.

<sup>9</sup> *Akan Sabzaki*, [1941] Kar. 429.

<sup>10</sup> *Babur Ali Sardar v. Kalachand Bepari*, [1939] 1 Cal. 567.

Sub-section (6).—If an offence has been committed against two different persons, the accused cannot be acquitted if he compounds only with one of them.<sup>1</sup>

346. (1) If, in the course of an inquiry or a trial before a Magistrate in any district outside the presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

COMMENT.—The provisions of this section apply where the offence committed is apparently one which the Magistrate is not competent to try (col. 8, Sch. II), or one in which he is personally interested (s. 556, *infra*), or one which he is otherwise incompetent to deal with (s. 337, *supra*, and ss. 482, 487, *infra*).

The superior Magistrate to whom the case is submitted may (1) either try the case himself, or (2) refer it to any subordinate Magistrate having jurisdiction, or (3) commit the accused for trial. The Madras High Court has held that if a Magistrate to whom a case is submitted under sub-s. (1) is of opinion that the evidence disclosed an offence properly triable by the Magistrate who submitted the case, he has jurisdiction under sub-s. (2) to refer the case back to the Magistrate who originally submitted the case.<sup>2</sup> The Bombay High Court has dissented from this view and held that the superior Magistrate cannot revise the view of the subordinate Magistrate, and refer the case back to the very Magistrate who has reported the case to him. The phrase "to any Magistrate subordinate to him having jurisdiction" is intended to mean "a subordinate Magistrate other than the Magistrate who made the reference or report and competent to deal with the case as submitted."<sup>3</sup>

Splitting up of an offence.—No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself jurisdiction.<sup>4</sup>

347. (1) If in any inquiry before a Magistrate, or any trial before a Magistrate, before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall commit the accused under the provisions hereinbefore contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

COMMENT.—This section applies when after commencement of inquiry or trial, the Magistrate finds that the case should be committed. The expression "under the provisions hereinbefore contained" refers to the provisions contained in Chapter XVIII.

<sup>1</sup> *Khikwansingh*, [1937] Nag. 286.

<sup>2</sup> *Pokur Reddi v. Muniswami Reddi*, (1930) 54 Mad. 16, F.B., overruling, *Kothur Hampanna*, (1922) 45 Mad. 346.

<sup>3</sup> *Haidarsha Lalsha v. Dhondu Abaji*, (1941) 44 Bom. L. R. 53, [1942] Bom. 198.

<sup>4</sup> *Ramanund Mahton v. Keylash Mahton*, (1885) 11 Cal. 236.

Where a Magistrate thinks from the first that a case ought to be tried by a Court of Session, the procedure laid down in Chapter XVIII of the Code is *prima facie* obligatory on him.<sup>1</sup>

It is not open to a Magistrate to decline to commit a case to the Court of Session on the ground that there is congestion of work in the latter Court. The Magistrate has to bear in mind not only the fact whether he could pass an adequate sentence, but has also to pay regard to the gravity of the offence, and the public importance of the case. Where the editor of a widely circulated daily newspaper was charged with the offence of sedition, the High Court directed the Chief Presidency Magistrate to commit the case to the High Court Sessions.<sup>2</sup>

Commitment may be made after framing a charge.<sup>3</sup> A Magistrate can commit to a Court of Session a counter case though not exclusively triable by that Court.<sup>4</sup>

**348. (1)** Whoever, having been convicted<sup>1</sup> of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused<sup>2</sup> of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, shall, if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for committing the accused, be committed to the Court of Session or High Court, as the case may be, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted :

Provided that, if any Magistrate in the district has been invested with powers under section 80, the case may be transferred to him instead of being committed to the Court of Session.

(2) When any person is committed to the Court of Session or High Court under sub-section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly committed, unless the Magistrate discharges such other person under section 209.

**COMMENT.**—This section deals with the trial of accused persons who have been previously convicted of offences against coinage and stamp-law (Chapter XII of the Penal Code) or against property (Chapter XVII of the Penal Code). If there has been a previous conviction of an offence under those Chapters, the Magistrate is bound to commit unless he can adequately punish the accused. He must therefore as a preliminary matter determine before framing a charge whether there has been a previous conviction, and whether he has power to pass an adequately severe sentence. If he thinks he has not such power he should frame a charge and commit the accused.<sup>3</sup>

1. 'Having been convicted.'—The offence for which the accused is convicted must have been one which is punishable with imprisonment for a term of three years ; but it is not necessary that he should have been punished with imprisonment for three years or upwards.

2. 'Again accused.'—To constitute an habitual offender within the meaning of this section, it is necessary that the subsequent offence charged should have been

<sup>1</sup> *Channing Arnold*, (1912) 6 L. B. R. 129.

<sup>2</sup> *Krishnaji Khadilkar*, (1929) 81 Bom. L. R. 602, 53 Bom. 611.

<sup>3</sup> *Ishahat*, (1924) 3 Ran. 42 ; *Crown*

*Prosecutor v. Bhagavathi*, (1918) 43 Mad. 83.

<sup>4</sup> *Ghulam Hussain*, [1948] Kar. 90.

<sup>5</sup> *K. Sellandi*, (1918) 38 Mad. 552.

committed by the accused after the previous conviction. The section does not apply where an offence contemplated by it is committed by the accused, ~~not~~ after he has been convicted but while still under trial, for a similar offence.

**Proviso.**—The proviso enables a Magistrate to transfer a case to the District Magistrate if he has been invested with special powers under s. 30, instead of committing it to the Court of Session. The District Magistrate can, under s. 350, act on the evidence recorded by the Magistrate transferring the case.<sup>1</sup>

**349. (1)** Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.<sup>1</sup>

**(1A)** When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate.

**(2)** The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law :

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

**COMMENT.**—This section contemplates that when a Magistrate having jurisdiction over the offence under trial finds the accused guilty of that offence, but considers that he is not competent to pass punishment of an appropriate description or sufficiently severe to meet the ends of justice, he should submit the entire proceedings for the orders of the District Magistrate or the Sub-divisional Magistrate to whom he may be subordinate. Along with the proceedings of the subordinate Magistrate, the accused must be forwarded to be dealt with finally by the superior Magistrate.

**1. 'District Magistrate or Sub-divisional Magistrate to whom he is subordinate.'**—The special powers to deal with proceedings under this section are conferred upon District and Subordinate Magistrates to whom the referring Magistrate is subordinate and upon no other Magistrates.<sup>2</sup>

**Sub-section (1).**—If the Magistrate considers the accused to be guilty and to deserve a larger penalty than he himself can impose, he should send the case to a superior Court for imposing a fitting sentence. He should forward the case without any record of conviction.<sup>3</sup> If, however, he records a conviction in such a case, it may be treated as a surplusage and a legal nullity, and need not be formally quashed.<sup>4</sup>

<sup>1</sup> *Shesha*, (1889) Unrep. Cr. C. 472.

<sup>2</sup> *Vinayak Narayan*, (1914) 38 Bom. 719, 16 Bom. L. R. 598.

<sup>3</sup> *Prayag Gope*, (1924) 3 Pat. 1015 ;

<sup>4</sup> *Mahmudi Sheikh*, (1894) 21 Cal. 632.

<sup>5</sup> *Narayan Dhaku*, (1928) 30 Bom. L. R. 620, 52 Bom. 456.

**Sub-section (2).—**The superior Magistrate to whom the proceedings have been submitted has a discretion to re-open the trial held by the subordinate Magistrate, or he can on those proceedings pass such judgment, sentence, or order in the case as he thinks fit, and as is in accordance with law. He must dispose of the case himself.<sup>1</sup> He cannot return the proceedings to the referring Magistrate on the ground that in his opinion that Magistrate is competent to pass an adequate or proper sentence.<sup>2</sup> He may commit the case to the Court of Session.<sup>3</sup> The Calcutta High Court is of the opinion that the Magistrate to whom the case is referred may send it back to the subordinate Magistrate with a direction to commit it to the Court of Session.<sup>4</sup>

**350. (1)** Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and recommence the inquiry or trial:

Provided as follows:—

(a) in any trial<sup>1</sup> the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard;<sup>2</sup>

(b) the High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346 or in which proceedings have been submitted to a superior Magistrate under section 349.

(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub-section (1).

**COMMENT.**—This section refers to inquiry or trial partly held by a Magistrate who has vacated his office, and is succeeded by another Magistrate.<sup>3</sup> The section provides that a Magistrate may pronounce judgment on evidence partly recorded by his predecessor and partly by himself, or on the evidence wholly recorded by his predecessor. A Magistrate who succeeds another Magistrate may act on the evidence recorded by his predecessor and frame a charge without re-examining the witnesses already examined.<sup>4</sup>

<sup>1</sup> *Velayudam*, (1881) 4 Mad. 283; *Bapuda*, (1887) Unrep. Cr. C. 350, Cr. R. No. 40 of 1887; *Ponnusamy Naden*, (1911) 36 Mad. 470.

<sup>2</sup> *Viranna*, (1886) 9 Mad. 377; *Hansa Tellapa*, (1886) 10 Bom. 196.

<sup>3</sup> *Chinnimarigadu*, (1876) 1 Mad. 289, F.B.; *Abdulla*, (1880) 4 Bom.

240, F.B.; *Abdul Wahab v. Chandia*, (1886) 13 Cal. 305; *Thakur Dayal*, (1904) 26 All. 344.

<sup>4</sup> *Chandu Gowala*, (1887) 14 Cal. 355.

<sup>5</sup> *Rqdhe*, (1889) 12 All. 68.

<sup>6</sup> *Lakshmi Reddy*, (1930) 54 Mad. 512.

In virtue of sub-section (3) the provisions of sub-section (1) are applicable when a case is transferred from one Magistrate to another.

**Scope.**—The provisions of this section do not apply to cases tried by Benches of Magistrates. There is no provision of law which provides for a change in the constitution of Benches of Magistrates during the hearing of a case.<sup>1</sup> Similarly, the section does not apply to Sessions Judges.<sup>2</sup>

**Judgment.**—The Calcutta High Court has held that this section empowers the succeeding Magistrate to decide the case on evidence recorded by his predecessor but it does not enable him to deliver judgment written by his predecessor and forwarded by him from the place of his transfer.<sup>3</sup> The Madras High Court is of the opinion that the succeeding Magistrate can sign and pronounce the judgment written by his predecessor.<sup>4</sup> The Rangoon High Court has held that where a Magistrate who has heard the case, has dated and signed the judgment but before delivery he has handed over charge of his office to his successor who reads it out on a subsequent date in open Court, the judgment is not in accordance with law and the defect of procedure is such that it cannot be cured by s. 587. It is not contemplated in the Code that a Magistrate shall deliver any judgment other than his own and if he does so it amounts to delivering no judgment at all.<sup>5</sup>

**Proviso (a).—1.** 'In any trial.'—The Madras High Court has held that this proviso applies only to a trial and not to an inquiry. Proceedings in a warrant-case before a charge is framed are merely an inquiry and not a trial, and if a Magistrate is transferred at that stage, the accused cannot demand a fresh examination of witnesses to be made by the succeeding Magistrate.<sup>6</sup> But as soon as a charge is framed by the succeeding Magistrate he can re-call all witnesses under s. 256.<sup>7</sup> The Bombay High Court has dissented from this view and held that where a warrant-case is transferred from the Court of one Magistrate to that of another after a charge has been framed, it is open to the latter to hear the case *de novo* and he is not bound to recommence the proceedings from the stage of the charge. The 'trial' of a criminal case means the proceeding which commences when the case is called on with the Magistrate on the bench, the accused in the dock and the representatives of the prosecution and defence, if the accused be defended, present in Court for the hearing of the case. In a warrant-case it cannot be deemed to begin with the framing of the charge.<sup>8</sup> The Calcutta High Court has held that the proper time for the accused to ask for re-summoning and re-hearing of the witnesses is as soon as the trial commences before the second Magistrate.<sup>9</sup> It is also of the opinion that this proviso does not apply to an inquiry under s. 145.<sup>10</sup> The Madras High Court has held that it applies to an inquiry under s. 107, and the accused in a security case is entitled to a trial *de novo* on the Magistrate being transferred.<sup>11</sup>

**2.** 'The accused may....demand that the witnesses....be re-summoned and re-heard.'—Under this proviso the accused has a right to demand that the

<sup>1</sup> *Damri Thakur v. Bhowani Sahoo*, (1895) 23 Cal. 194.

<sup>2</sup> *Tarada Baladu*, (1881) 3 Mad. 112; *Sakharam*, (1901) 3 Bom. L. R. 558, 26 Bom. 50; *Badri Prasad*, (1912) 35 All. 68.

<sup>3</sup> *Baisab Chetan v. Amin Ali*, (1923) 50 Cal. 664.

<sup>4</sup> *Savarimuthu Pillai*, (1916) 40 Mad. 108.

<sup>5</sup> *Chinnayyar v. Maung Mya Thi*, [1889] Ran. 570.

<sup>6</sup> *Ramanathan Chettiar*, (1922) 46 Mad. 719; *Sriranulu v. Veerasalingam*,

(1914) 38 Mad. 585.

<sup>7</sup> *Palaniandy Goundan*, (1908) 32 Mad. 218.

<sup>8</sup> *Dagdu v. Punja*, (1936) 38 Bom. L. R. 1190, [1937] Bom. 211; *Ramchandra Narhar*, (1943) 45 Bom. L. R. 962.

<sup>9</sup> *Gomer Sirda*, (1898) 25 Cal. 863. See also *Sahib Din*, (1922) 3 Lah. 115.

<sup>10</sup> *Syed Sadek v. Sachindra*, (1922) 37 C. L. J. 128.

<sup>11</sup> *Venkatachinnayya*, (1920) 43 Mad. 511, F.B.



witnesses shall be re-summoned or re-heard.<sup>4</sup> The word 're-heard' connotes that the witnesses re-summoned are to be fully heard again before cross-examination and re-examination.<sup>5</sup> A demand by the accused to re-summon the witnesses cannot be refused.<sup>6</sup> The accused may change his mind and say that he wishes only certain witnesses to be examined.<sup>4</sup> If a witness has died his evidence may be admitted under s. 88 of the Evidence Act.<sup>5</sup> If a Magistrate refuses to re-summon and re-hear witnesses in contravention of this provision s. 587 of the Code cannot cure the defect.<sup>6</sup> A "register case" or preliminary inquiry into an accusation of an offence triable exclusively by a Court of Session is not a trial, before the charge is framed, but an inquiry.<sup>7</sup> In inquiries preliminary to commitment the accused has no right to demand that the witnesses be re-heard; and he has not the right in any miscellaneous inquiries under the Code.<sup>8</sup>

**Proviso (b).—**This proviso refers to a trial. All Magistrates are subordinate to the District Magistrate of a district. The District Magistrate, therefore, may act under this proviso and set aside a conviction by a first class Magistrate, although the appeal would lie to the Court of Session.<sup>9</sup>

**350A.** No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is duly constituted under sections 15 and 16, and the Magistrates constituting the same have been present on the Bench throughout the proceedings.

**COMMENT.**—This section is not very happily worded, but apparently it is intended to apply to only such cases where one or more members drop out altogether and the remaining Magistrates who constitute the bench which passes the order or judgment have been present on the bench throughout the proceedings. There can be no doubt that if any of the Magistrates constituting the bench which pronounces the judgment or the order has not been present throughout the proceedings, then this section is not complied with. In such a case there would at least be an irregularity in the trial. Three Honorary Magistrates constituted a bench, two forming a quorum. In the course of a trial before all the three, on one particular day one of them was absent; and some witnesses were examined and cross-examined on that day. The absentee Magistrate re-joined on the next date and continued to be present all along and took part in delivering and signing the judgment, which was an unanimous one of conviction. It was held that there was an irregularity which had occasioned a failure of justice; the conviction was set aside and a re-trial ordered.<sup>10</sup>

**351. (1)** Any person<sup>1</sup> attending a Criminal Court, although not under arrest or upon a summons, may be detained by Detention of offenders attending such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance

<sup>1</sup> *Sahib Din*, (1922) 3 Lah. 115; *Ramchandra Narhar*, (1948) 45 Bom. L. R. 962.

*Mahmud Khan*, [1945] Nag. 419. *Nathu*, [1945] Nag. 605, disapproved.

*Tukaram*, [1936] Nag. 92.

*Palayan*, [1942] Mad. 410.

*Lekal*, (1927) 8 Lah. 570.

*Gomer Sirdar*, (1898) 25 Cal. 868.

<sup>2</sup> *Palantandy Goundan*, (1906) 32 Mad. 218.

<sup>3</sup> *Radhe*, (1889) 12 All. 66.

<sup>4</sup> *Pitya Gopal*, (1884) 9 Bom. 100; *Laskari*, (1885) 7 All. 853; *Opendra Nath v. Dukhini*, (1886) 12 Cal. 473.

<sup>5</sup> *F.B.*

<sup>10</sup> *Dasrath Rai*, (1933) 56 All. 599.

and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

(2) When the detention takes place in the course of an inquiry under Chapter XVIII or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

**COMMENT.**—This section applies to investigations preliminary to committal for a subsequent trial and to cases where the trial is actually being proceeded with. Compare s. 191.

As this section provides no express exception such as is contemplated by s. 198, it must be read subject to s. 198, and a Sessions Judge has no power to join a person as co-accused in the case before him, whether that person happens to attend the Court or not, when no inquiry of any sort has been held by a Magistrate into the charges against him.<sup>1</sup>

1. 'Any person.'—The person may be a witness in the case or not.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them :

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

**COMMENT.**—This section gives the Magistrate who tries a case a discretion to prescribe the place in which a trial shall be held. Such a place shall be deemed to be an open Court to which the public may have access subject to the orders of the trial Magistrate in a particular case that the public or a particular person shall not have access thereto.<sup>2</sup> This section empowers a Magistrate to exclude the public generally or any particular person from the Court-room. The Court has to exercise its discretion in proceedings in such matters as ought to be conducted in privacy.

## CHAPTER XXV.

### OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with,<sup>1</sup> in presence of his pleader.

**COMMENT.**—This section makes it obligatory that evidence for the prosecution and defence should be taken in the presence of the accused. A trial is vitiated by failure to examine the witnesses in the presence of the accused. Mere cross-

<sup>1</sup> *Mir Fateh Khan*, [1942] Kar. 328.

*U Khemair*, [1940] Ran. 122.

examination in the presence of the accused, is not sufficient.<sup>2</sup>

Chapter XVIII relates to inquiry into cases triable by the Court of Session or High Court; Chapter XX, to the trial of summons-cases by Magistrates; Chapter XXI, to the trial of warrant-cases by Magistrates; Chapter XXII, to summary trials; and Chapter XXIII, to the trial before High Courts and Courts of Session.

1. 'Personal attendance is dispensed with.'—The High Court has power to dispense with the attendance of an accused during his trial before it in the Sessions on the ground of ill-health.<sup>3</sup> Similarly, the Sessions Judge has power to dispense with the personal attendance of an accused and to allow him to appear by pleader during the Sessions trial. Such a power may properly be exercised in favour of *pardanashin* ladies.<sup>4</sup> This decision seems to be of doubtful authority in view of the specific provisions of s. 271.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

COMMENT.—Section 362 provides for the manner in which evidence should be recorded by a Presidency Magistrate.

355. (1) In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in sub-section (1) of section 260, clauses (b) to (m), both inclusive, when tried by a Magistrate of the first or second class and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence<sup>1</sup> of each witness as the examination of the witness proceeds.

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

COMMENT.—This section must be read with s. 263 which provides that in cases where no appeal lies evidence need not be recorded.<sup>4</sup>

Scope.—This section does not apply to a summary trial.<sup>5</sup>

1. 'Memorandum of the substance of the evidence.'—In cases falling under this section the memorandum is the only record of evidence. There is no direction in the Code as to the language in which the memorandum is to be recorded.

Section 362 provides for the manner in which evidence should be recorded by a Presidency Magistrate.

<sup>1</sup> *Bigan Singh*, (1927) 6 Pat. 691; *Allu*, (1928) 4 Lah. 376.

<sup>2</sup> *King*, (1912) 14 Bom. L. R. 236.

<sup>3</sup> *Kandamani Devi*, (1922) 45 Mad. 359.

<sup>4</sup> *Satish Chandra Mitra v. Mamatha Nath*, (1920) 48 Cal. 280.

<sup>5</sup> *Mantu Tewari*, (1926) 40 All. 261.

In proceedings under Chapter XXXVI (maintenance of wives and children) the evidence taken must be recorded in the manner prescribed by s. 355,<sup>1</sup> that is, as in summons-cases.

**356. (1)** In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing<sup>2</sup> in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge.

(2) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

(2A) When the evidence of such witness is given in any other language, not being English, than the language of the Court, the Magistrate or Sessions Judge may take it down in that language with his own hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence in the language of the Court or in English shall form part of the record.

(3) In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

(4) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

**COMMENT.**—Except in cases provided for by s. 355, or otherwise specially provided for (ss. 117, 488), the evidence in all trials and inquiries before Magistrates (not Presidency Magistrates) should ordinarily be taken down in the language of the Court, unless it is given in English, by the Magistrate himself or by someone else under the direction of the Magistrate. Section 357 enables the Provincial Government to authorize any Sessions Judge or Magistrate to take down the evidence in the English language.

• Sub-section (1).—According to the Calcutta High Court the provisions of this sub-section are imperative and non-compliance therewith cannot be condoned.<sup>3</sup> But the Allahabad High Court is of the opinion that where the irregularity in observing the statutory rule laid down in this section has not prejudiced the parties or occasioned a failure of justice, it is curable under s. 587. In this case the evidence of witnesses in proceedings under s. 145 was not recorded in the vernacular, as required by this section but was recorded in English by the Magistrate and it was held that

<sup>1</sup> *Kali Dasi v. Durga Charan*, (1892) 20 Cal. 351.

<sup>2</sup> *Sadananda Mandal v. Krishnas Mandal*, (1914) 42 Cal. 381.

a breach of an imperative statutory rule of procedure was not enough to vitiate the whole proceedings and that the irregularity in question was a mere technical irregularity which did not go to the root of the trial of the case.<sup>1</sup>

1. 'Evidence of each witness shall be taken down in writing.'—In each deposition should appear the name of the person examined, the name of his or her father, and, if a married woman, the name of her husband, the religion, caste, profession, and age of the party or witness, and the village in which he or she resides. The proper way of recording evidence is to take it down in the first person, exactly as spoken by the witness.<sup>2</sup> The Judge is not bound to make a verbatim record of any particular question and answer. If either side requests him to do so, the Judge may in his discretion act accordingly.

The word "witness" includes complainant. In the Madras Presidency the complainant is always referred to as the first witness.

Sub-section (3).—The provisions of this sub-section apply only to cases in which the evidence recorded under the first sub-section is not recorded in the Magistrate's own hand.<sup>3</sup>

**357. (1)** The Provincial Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so and shall cause the evidence to be taken down in writing from his dictation in open Court.

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record :

Provided that the Provincial Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

**COMMENT.**—This section empowers the Provincial Government to authorize the presiding officers of criminal Courts to take down the evidence of witnesses in their vernaculars or in English or in the language of their Courts.

The language in which the plea of the accused is conveyed to the Court by the interpreter is the language in which it should be recorded. It is not essential that it should be recorded in the words of the very language in which it is made.<sup>4</sup>

**358.** In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Provincial Government has made the order referred to in section 357, in the manner provided in the same section.

<sup>1</sup> *Kallu v. Bashir Uddin*, (1930) 53 All. 172.

<sup>2</sup> *Zoolfkar Khan*, (1871) 16 W. R. (Cr.) 35.

<sup>3</sup> *Sadananda Mandal v. Krishna Mandal*, (1914) 42 Cal. 381.

<sup>4</sup> *Vaibhile*, (1880) 5 Cal. 826.

Mode of recording evidence under section 356 or section 357.

**359.** (1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

**COMMENT.**—The proper and convenient way of recording evidence is to take it down in the first person, exactly as spoken by the witness.<sup>1</sup>

**360.** (1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

Procedure in regard to such evidence when completed.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

**COMMENT.**—This section requires that the evidence of a witness when completed should be read over to him in the presence of the accused or his pleader.<sup>2</sup> The reading of the deposition by the witness himself is not sufficient.<sup>3</sup> The object of reading over a deposition to a witness is to obtain an accurate record from the witness of what he really means to say, and to give him an opportunity of correcting the words which the Magistrate or his clerk has taken down. The section does not make it necessary that the evidence should be read by the Court itself.

The accused was convicted by a District Magistrate on a charge of abetment of forgery. At the trial the depositions of witnesses were read over to them while the case otherwise proceeded, and those of some witnesses were handed to them to read to themselves. The Privy Council on appeal held that as there had been no actual or possible failure of justice the appeal failed whether the sections of the Code had or had not been properly applied; that the reading over of depositions to witnesses while the case was otherwise proceeding was not a violation of this section, the object of which being to secure an accurate record from the witness of what he meant to say, not to enable the accused or his pleader to suggest corrections; that it was however better that depositions, unless merely formal, should be read over so that the accused or his pleader could give their undivided attention to the matter; that the giving of the depositions to witnesses to read to themselves was an irregularity curable under s. 537.<sup>4</sup>

Section 364 provides for the recording of the examination of accused persons.

<sup>1</sup> *Zoolfkar Khan*, (1871) 16 W. R. (Cr.) 36, 37.

<sup>2</sup> *Jogendra Nath Ghose*, (1914) 42 Cal. 240.

<sup>3</sup> *Jyotish Chandra Mukerjee*, (1909) 36 Cal. 955; *Amrita Lal Hazra*, (1915) 42 Cal. 957.

<sup>4</sup> *Abdul Rahman*, (1926) 54 I. A. 56, 5 Ran. 53, 29 Bom. L. R. 818.

**361. (1)** Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

**(2)** If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

**(3)** When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

**362. (1)** In every case tried by a Presidency Magistrate in which an appeal lies, such Magistrate shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

**(2)** Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

**(2A)** In every case referred to in sub-section (1), the Magistrate shall make a memorandum of the substance of the examination of the accused. Such memorandum shall be signed by the Magistrate with his own hand, and shall form part of the record.

**(3)** Sentences unless they are sentences of imprisonment ordered to run concurrently passed under section 85 on the same occasion shall, for the purposes of this section, be considered as one sentence.

**(4)** In cases other than those specified in sub-section (1), it shall not be necessary for a Presidency Magistrate to record the evidence or frame a charge.

**COMMENT.**—This section provides that where a Presidency Magistrate passes appealable sentences the evidence must be fully recorded.

In virtue of sub-section (4) he is not bound to record the evidence or frame a charge in non-appealable cases. His right to refuse to record evidence is absolute.<sup>1</sup>

The practice of prosecution not to inform the Presidency Magistrate about previous convictions of an accused person before his trial is salutary as it is founded on the desire of the prosecuting authorities to see that the accused has fair play. But they may indicate to the Magistrate, in a case in which he is not bound to take evidence but where the accused has previous convictions, that they think that the case is one in which it is desirable that the evidence should be recorded. An intimation of that sort cannot prejudice the trained mind of a Magistrate and the difficulty of finding, after he has tried the case, that he ought to have recorded evidence can be saved. Where the Magistrate has tried a case without recording the evidence and he finds that a longer sentence than six months ought to be passed he should record the evidence afresh.<sup>2</sup>

<sup>1</sup> *D'Souza*, (1931) 34 Bom. L. R. 286, 56 Bom. 200.

<sup>2</sup> *Ahmad*, (1934) 36 Bom. L. R. 1126.

**363.** When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

**COMMENT.**—The object of this section is to give to the appellate Court some aid in estimating the value of the evidence recorded by another Court. A Judge may note the demeanour of a witness whilst under examination, but it is generally unsafe to pronounce an opinion on the credibility of the witness until the whole of his evidence has been taken. The demeanour of the witness under other circumstances ought not to be taken notice of by the Judge.

**364. (1)** Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of Oudh, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full,<sup>1</sup> in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English :<sup>2</sup> and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused<sup>3</sup> and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263 or in the course of a trial held by a Presidency Magistrate.

**COMMENT.**—This section relates to the examination of an accused person and it declares in what manner such examination shall be conducted and recorded. It applies only to the examination of the accused in inquiries and trials. It does not govern investigations.

The examination of an accused under this section is subject to the purpose referred to in s. 342, viz., “to enable him to explain any circumstances appearing against him to show that he is guilty.”<sup>1</sup>

An accused person cannot properly be examined at the commencement of an inquiry or trial, and before any evidence has been taken, for there is nothing before the Court which he can be called upon to explain.<sup>2</sup>

<sup>1</sup> *Rangi*, (1886-87) 10 Mad. 293. <sup>2</sup> *Sagal Samba*, (1893) 21 Cal. 642.

<sup>3</sup> *Hawthorne*, (1891) 13 All. 345;



Evidence of the Magistrate recording the confession is inadmissible to cure the defects therein.<sup>1</sup>

1. 'Every question put to him and every answer given by him, shall be recorded in full.'—This is of great importance, for a statement made in answer to a question put may have a different meaning if considered without such question.

In the absence of any such questions the confession is inadmissible under this section. When questions have in fact been put, the failure to record them by the Magistrate is curable under s. 538, provided that the error has not prejudiced the accused in his defence on the merits. But if the questions were not put at all, the confession was not duly made and s. 538 does not apply.<sup>2</sup> Section 538 removes defect of form, but not a defect of substance.<sup>3</sup>

2. 'In the language in which he is examined, or, if that is not practicable, in the language of the Court, or in English.'—Ordinarily, the statement should be recorded in the language in which the accused was examined. The object in view is to obtain the words used by the accused, and by this means to learn the meaning of what he may have said. If it is not practicable to record the examination in the language in which it is made, it may be recorded in the language of the Court or in English. Where the statement is made in a foreign language unknown to the Court, the language in which that statement is conveyed to the Court by the interpreter is the language in which the statement should be recorded.<sup>4</sup> Where the Magistrate recorded in English a statement made in Urdu and the Court officer recorded it in Bengali, the language of the Court, the latter was treated as the record and the former as the memorandum.<sup>5</sup> Where a confession was recorded in English and not in the language in which it was made, it was held that though the Magistrate could have recorded the confession in the language in which it was made and the provision of this sub-section had not been fully complied with, it was a defect which was curable under s. 538 of the Code.<sup>6</sup>

Sub-section (2).—There is nothing in the Code which necessitates a Magistrate to take down the statement of the accused with his own hand. It is enough if he appends a certificate that the examination was conducted in his presence and hearing, and contains accurately all that was stated by the accused person.<sup>7</sup> In such a case he must make a memorandum as stated in sub-s. (3).

3. 'Signed by the accused.'—Where an accused person cannot sign his name his mark is sufficient for the requirements of this section. The record of confession must bear the signature of the accused, otherwise it is not admissible in evidence.<sup>8</sup>

365. Every High Court established by Royal Charter and the Chief Court of Oudh shall from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the evidence shall be taken down in accordance with such rule.

Record of evidence in High Court.

<sup>1</sup> *Neharu*, [1937] Nag. 268.  
<sup>2</sup> *Sardarmitya*, [1937] Nag. 416.  
<sup>3</sup> *Kommaju Brahman*, (1939) 19 Pat.  
 301; *Saw Min*, [1939] Ran. 97.  
<sup>4</sup> *Vaimbilee*, (1880) 5 Cal. 826.

<sup>5</sup> *Lalchand*, (1891), 18 Cal. 549, 554.  
<sup>6</sup> *Kommaju Brahman*, sup.  
<sup>7</sup> *Shivya*, (1876) 1 Bom. 219.  
<sup>8</sup> *Neharu*, sup.

## CHAPTER XXVI.

## OF THE JUDGMENT.

366. (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced,<sup>1</sup> or the substance of such judgment shall be explained,—

(a) in open Court<sup>2</sup> either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, or in some other language which the accused or his pleader understands :

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

COMMENT.—This section provides for the manner in which a judgment is to be delivered. The next section declares what a judgment should contain.

“Judgment” means the expression of the opinion of the Judge or Magistrate arrived at after due consideration of the evidence and of the arguments.<sup>1</sup> Judgment means a judgment of conviction or acquittal, but not an order of discharge under s. 209 or s. 253.<sup>2</sup>

1. ‘Shall be pronounced.’—That is, shall be read out in open Court.

2. ‘In open Court.’—If a Judge dies after writing his judgment but before delivering it in open Court, the judgment is not to be considered as a judgment, but merely as an opinion. No expression of opinion by a Judge becomes a judgment until it is pronounced.<sup>3</sup>

3. ‘After the termination of the trial.’—The legality or illegality of a judgment in consequence of its delivery after sentence is passed, is a question which can only be answered according to the facts of each case. Where no material prejudice is caused, the omission to write a judgment at the time of the passing of the sentence cannot be regarded as an illegality. It is a mere illegality cured by s. 537.<sup>4</sup> The Allahabad and the Madras High Courts have held that the sentence is illegal if there is no written judgment when “it is passed.”<sup>5</sup> The Calcutta High

<sup>1</sup> *Damu Senapati v. Sridhar Rajwar*, (1898) 21 Cal. 121, 127.

<sup>2</sup> *Dwarika Nath v. Beni Madhab*, (1901) 28 Cal. 652; *Maheswara Kondaya*, (1906) 31 Mad. 543.

<sup>3</sup> *Nundeeput Mahta v. Alexander*

*Shaw*, (1870) 18 W. R. 209.

<sup>4</sup> *Thaver Isaji Borce*, (1911) 18 Bom. L. R. 635.

<sup>5</sup> *Hargobind*, (1892) 14 All. 242; *Bandaru Atchayya*, (1903) 27 Mad. 237.

Court has held that such a sentence is not illegal if there is no failure of justice.<sup>1</sup>

**367. (1)** Every such judgment shall, except as otherwise expressly provided by this Code, be written by the Language of presiding officer of the Court or from the dictation of judgment. Contents of judgment. such presiding officer in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon and the reasons for the decision;<sup>2</sup> and shall be dated and signed by the presiding officer in open Court<sup>3</sup> at the time of pronouncing it and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him.

(2) It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

(3) When the conviction is under the Indian Penal Code and it is Judgment in al- doubtful under which of two sections, or under which alternative. of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

(6) For the purposes of this section, an order under section 118 or section 128, sub-section (3), shall be deemed to be a judgment.

**COMMENT.—1.** 'Points for determination, the decision thereon and the reasons for the decision.'—Every judgment of a criminal Court must contain a clear statement of the points for determination, the decision thereon, and the reasons for the decision. It should state sufficient particulars to enable a Court of appeal to know what facts are proved and how.<sup>2</sup> A judgment has not to be a resumé of the entire evidence or a discussion of the relevancy of all the evidence. A Court is entitled to select such evidence as it considers important and sufficient to prove the point in issue.<sup>3</sup> An exception has been made in regard to judgments in summary trials (see ss. 263, 264, 265), and judgments of Presidency Magistrate (s. 270).

Where the judgment shows that the presiding Judge or Magistrate has perused the evidence, heard arguments, and come to an independent opinion on the merits of the case, it will not be set aside although it does not strictly comply with the provisions of this section unless there is some reason to believe that there has been a failure of justice<sup>4</sup>.

Where the statement of points for determination and the reasons for the decision were not prepared until three weeks after the pronouncement of the judgment

<sup>1</sup> *Tilak Chandra v. Baisagomoff*, *Hussain*, [1945] Nag. 441. (1896) 23 Cal. 502.

<sup>2</sup> *Dhurmya*, (1895) Unrep. Cr. C. 888, Cr. R. No. 76 of 1895; *Shankar*, (1915) 17 Bom. L. R. 890; *Mohammad*

<sup>3</sup> *Jhabwala*, (1933) 55 All. 1040.

<sup>4</sup> *Tippanna Karigar*, (1932) 34 Bom. L. R. 1110.

in open Court, it was held that the defect vitiated the conviction.<sup>1</sup>

An order of discharge is not a judgment and no reasons are necessary where such an order is passed, but it is desirable that the Magistrate should record his reasons for discharge.<sup>2</sup>

**Appellate Court's judgment.**—This section applies to a judgment of an appellate Court.<sup>3</sup> Where a judgment of an appellate Court stated merely that the lower Court's order contained a full statement of facts, its application of evidence was correct, and the appellant's pleader's arguments were not convincing, it was held that the judgment failed to satisfy the requirements of this section, and the irregularity vitiated the judgment.<sup>4</sup> So long as the appellate Court writes a judgment from which the High Court can gather what the decision really was, that is, in general, sufficient compliance with this section.<sup>5</sup>

2. 'Shall be dated and signed by the presiding officer in open Court.'—An omission to sign and date a judgment by a Magistrate in open Court at the time of pronouncing it amounts to a mere irregularity curable by s. 587.<sup>6</sup> A Magistrate has discretion to date, sign, and pronounce his predecessor's judgment if a new trial is not demanded.<sup>7</sup>

The provisions regarding dating and signing of written judgments do not apply to a High Court. Section 425 requires that the judgment of the High Court should be certified to the Court below.<sup>8</sup>

3. 'Shall record the heads of the charge to the jury.'—The charge to the jury must be a substitute for a judgment. The heads of charge need not be meticulous or lengthy but must give accurately the substance of what the Judge said to the jury so that the High Court may, if occasion arises, be able to ascertain from the record whether the law and the facts relative to the case were fairly and properly put to the jurors.<sup>9</sup>

368. (1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.<sup>1</sup>

Sentence of transportation. (2) No sentence of transportation shall specify to which the place the person sentenced is to be transported.

**COMMENT.**—Capital sentences are passed by Sessions Judges subject to confirmation by the High Court. As to submitting a sentence of death for confirmation, see Chapter XXVII, and as to execution of such a sentence, see s. 38, *supra*, and s. 388, *infra*.

1. 'That he be hanged by the neck till he is dead.'—These words should be inserted in the sentence.

369. Save as otherwise provided by this Code<sup>1</sup> or by any other law Court not to alter for the time being in force or, in the case of a High Court judgment. Court established by Royal Charter, by the Letters Patent of such High Court, no Court, when it has signed its judgment,

<sup>1</sup> *Jhari Lal*, (1929) 9 Pat. 904, 740.

<sup>2</sup> *Nabi Fakira*, (1907) 9 Bom. L. R. 250.

<sup>3</sup> *R. 250.*

<sup>4</sup> *Jamait Mallick*, (1907) 35 Cal. 188.

<sup>5</sup> *Shanmukh*, (1930) 32 Bom. L. R. 353.

<sup>6</sup> *Abdul Rahman*, (1935) 62 Cal. 798.

<sup>6</sup> *Mahomed Hayet Mulla*, (1929) 7 Ran. 370.

<sup>7</sup> *Savarimuthu Pillai*, (1916) 40 Mad. 108.

<sup>8</sup> *Pragmadho Singh*, (1932) 55 All. 182.

<sup>9</sup> *Kashimuddin*, (1920) 47 Cal. 795.

<sup>9</sup> *Rupan Singh*, (1925) 4 Pat. 626.

shall alter or review the same,<sup>3</sup> except to correct a clerical error.<sup>3</sup>

**COMMENT.**—Any alteration of a judgment not sanctioned by this section is a nullity, and this section forbids any alteration of a judgment after it has been signed. As soon as the judgment is signed, it becomes final and the Court is *functus officio*.<sup>1</sup>

Where a Sessions Judge or Magistrate once sentences an offender to pay a fine but omits through oversight to pass a sentence in default of payment of fine, it is not open to him to pass such sentence subsequently. The proper course is to submit the proceedings to the High Court.<sup>2</sup>

1. 'Save as otherwise provided by this Code.'—This expression refers to ss. 395, 484 and 484 of the Code and not to s. 561A.<sup>3</sup>

2. 'Alter or review the same.'—The Court has no power to alter or review its judgment after it is signed. The same principle holds good in respect of final orders which are of the nature of judgment.<sup>4</sup> There are, however, two sections in the Code (*viz.*, 395 and 484) which permit a Court to revise its own order.

This section does not empower the High Court to revise or review its judgment in a criminal appeal or revision after it has been pronounced and signed,<sup>5</sup> except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on the merits or to correct a clerical error.<sup>6</sup> The High Court can alter or review its judgment before it is signed.<sup>7</sup> Where after a judgment had been pronounced but before it had been typed or signed it was discovered that the defence had relied on an inaccurate copy of a notification showing that the Special Judge by whom the case had been tried had no power to try it and the High Court directed a *de novo* hearing, it was held that it was wrong to say that the former judgment, having been pronounced by the High Court was final, and that the High Court was not competent to re-hear the appeal.<sup>8</sup> Section 561A does not modify this section so as to give a general and undefined power of review of judgment; nor was such a power inherent in the High Court.<sup>9</sup> The only remedy is to move the Provincial Government to exercise its powers where the accused has been prejudiced.<sup>10</sup> Where a case is disposed of merely for default of appearance, or an order is passed to the prejudice of the accused, and by mistake or inadvertence no opportunity was given him to be heard, the High Court may review the same.<sup>11</sup>

3. 'Clerical error.'—This means mistake in copying or writing.

370. Instead of recording a judgment in manner hereinbefore  
Presidency Ma- provided, a Presidency Magistrate shall record the  
gistrate's judgment. following particulars :—

- (a) the serial number of the case ;
- (b) the date of the commission of the offence ;
- (c) the name of the complainant (if any) ;

<sup>1</sup> *Sahadat Miran*, (1895) Unrep. Cr. C. 804, Cr. R. No. 62 of 1895.

<sup>2</sup> *Dhondi Nathaji*, (1921) 23 Bom. L. R. 846; *Ganesh Ramakrishna*, (1897) 23 Bom. 50.

<sup>3</sup> *Kunji Lal*, (1934) 56 All. 990.

<sup>4</sup> *Haridial Buch*, (1897) 22 Bom. 949; *Laxman Rao*, [1940] Nag. 267.

<sup>5</sup> *Godat Raout*, (1886) 5 W. R. (Cr.) 61 (65), F.B.; *Pow*, (1885) 10 Bom. 176, F.B.; *Kunhammad Haji*,

(1922) 46 Mad. 382; *Raju*, (1928) 10 Lah. 1; *Kunji Lal*, *sup.*

<sup>6</sup> *Sardar Diwan Singh*, [1936] Nag. 99.

<sup>7</sup> *Amodini Dasee v. Darsan*, (1911) 38 Cal. 828.

<sup>8</sup> *Mohan Singh*, (1943) 23 Pat. 28.

<sup>9</sup> *Banwari Lal*, (1935) 57 All. 867.

<sup>10</sup> *Dahu Raut*, (1933) 61 Cal. 155; *Kunji Lal*, *sup.*

<sup>11</sup> *Rajab Ali*, (1918) 46 Cal. 60.

- (d) the name of the accused person, and (except in the case of an European British subject) his parentage and residence ;
- (e) the offence complained of or proved ;
- (f) the plea of the accused and his examination (if any) ;
- (g) the final order ;
- (h) the date of such order ; and
- (i) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

**COMMENT.**—The terms of this section are not abrogated by s. 441, which merely allows the Presidency Magistrate to supplement the reasons which have been already recorded under this section. If the statement submitted under s. 441 discloses sufficient grounds for the decision, the defect in not recording reasons under this section may be excused under s. 537, if no substantial failure of justice has occurred.<sup>1</sup>

Summary trial procedure does not apply to a trial before a Presidency Magistrate. Sections 263, 264, 362 and this section lay down the procedure which such a Magistrate has to follow.

Clause (1).—This clause requires a brief statement of the reasons for conviction because the High Court may know the Magistrate's reasons if the record is called for on revision.<sup>2</sup> There must be a substantive sentence of imprisonment under this clause and not a sentence in default of payment of fine.<sup>3</sup>

Where a fine below two hundred rupees is inflicted no brief statement of the reasons for conviction is necessary ; but, in the event of a written judgment by the Presidency Magistrate, he should come to proper findings in support of the conviction.<sup>4</sup>

**371. (1)** On the application of the accused a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

(2) In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

(3) When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

**372.** The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

<sup>1</sup> *Dervish Hussain*, (1922) 46 Mad. 890 ; *Dervish Hussain*, sup. 253.

<sup>2</sup> *Moteeram v. Belaseeram*, (1886) 14 Cal. 174.

<sup>3</sup> *Yacoob v. Adamson*, (1886) 13 Cal. 273 ; *Emaman*, (1904) 31 Cal. 988 ; *Shankar*, (1915) 17 Bom. L. R. Cal. 656.

<sup>4</sup> *Nishikanta Chatterji*, (1932) 60

**Court of Session to send copy of finding and sentence to District Magistrate.**

**373.** In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

## CHAPTER XXVII.

### OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

**374.** When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court.

**COMMENT.**—It is only in cases in which a sentence of death has been passed that the Judge should refer the proceedings to the High Court; and the High Court can only deal with them as a Court of reference. It is the practice of the High Court to be satisfied on the facts as well as the law of the case, that the conviction is right, before it proceeds to confirm the sentence.<sup>1</sup> The High Court has to come to its own independent conclusion as to the guilt or innocence of the accused, independently of the verdict of the jury or of the opinion of the Judge. Though the High Court is not bound by the verdict of the jury it attaches greatest possible weight to the verdict if it answers a reasonable test.<sup>2</sup>

**375. (1)** If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

**(2)** Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

**(3)** When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

**COMMENT.**—This section is similar in its terms to s. 428 relating to appeals which has been extended by s. 439 to cases before the High Court on revision.

**Power of High Court to confirm sentence or annul conviction.**

**376.** In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

<sup>1</sup> *Abdul Razak*, (1894) Unrep. Cr. C. 710, Cr. R. No. 42 of 1894.

<sup>2</sup> *Binayendra Chandra Pande*, (1886) 63 Cal. 929.

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person :

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

**COMMENT.**—The High Court has power to interfere with the verdict if it is perverse, or if evidence has been improperly admitted or excluded, or if there is misdirection by the Judge. It is bound to go into the facts and the law in a case submitted for confirmation of a sentence of death. Its power is not limited as in appeal.<sup>1</sup>

The Federal Court has power where there has been inordinate delay in executing death sentences in cases which come before it, to substitute a sentence of transportation for life on account of the time factor alone, however right the death sentence was at the time when it was originally imposed ; but this is a jurisdiction which the Court would be slow to exercise as it very closely entrenches upon the powers and duties of the executive in regard to sentences imposed by Courts.<sup>2</sup>

**377.** In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two Judges.

**378.** When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

**COMMENT.**—The same provision is made by s. 429 for similar contingency on the hearing of an appeal, and s. 429 has been applied by s. 439 to cases heard on revision.

**379.** In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court and attested with his official signature, to the Court of Session.

**380.** Where proceedings are submitted to a Magistrate of the first class or a Sub-divisional Magistrate as provided by section 562, such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or

<sup>1</sup> *Daji Yesaba*, (1915) 17 Bom. L. R. 1072.      <sup>2</sup> *Piare Dusadh*, [1944] F. C. R. 61.



additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

**COMMENT.**—This section provides the procedure to be followed when a Magistrate not empowered under s. 562 is of opinion that a first offender should be dealt with under the provisions of that section.

There is a clear difference between s. 349 and this section. When a Magistrate submits proceedings under s. 349, he does not convict but merely expresses the opinion that the accused is guilty. The order which a Magistrate is permitted to pass under this section can only be such an order as can be passed upon a convicted person.<sup>1</sup>

## CHAPTER XXVIII.

### OF EXECUTION.

**381.** When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such order passed under section 376. Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

**COMMENT.**—If the sentence of death is confirmed, a warrant in the form given in Schedule V (No. xxxv) is issued to the jailor.

**382.** If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to transportation for life.

**COMMENT.**—The High Court is the only judicial tribunal in which the law has vested the powers of postponing the execution of a sentence of death confirmed by it.<sup>2</sup> This is an instance of a case contemplated by s. 380 in which the High Court, after signing or passing judgment, may alter or review the same.

For form of warrant after a commutation of sentence, see Schedule V, No. xxxvi.

**383.** Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be, confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

**384.** Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail, or other place in which the prisoner is, or is to be, confined.

<sup>1</sup> *Public Prosecutor v. Gurappa Naidu*, (1933) 57 Mad. 85.

<sup>2</sup> Weir 441.

**COMMENT.**—A separate warrant should be issued in the case of each prisoner and a definite period of imprisonment should be stated.<sup>1</sup>

Warrant with whom to be lodged. **385.** When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

**386. (1)** Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender ;<sup>1</sup>

(b) issue a warrant to the Collector of the District authorizing him to realise the amount by execution according to civil process against the moveable or immoveable property, or both, of the defaulter :

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(2) The Provincial Government may make rules regulating the manner in which warrants under sub-section (1), clause (a), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Courts issue a warrant to the Collector under sub-section (1), clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly :

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

**COMMENT.**—This section applies when an offender is sentenced to pay a fine under the Indian Penal Code. See ss. 63-70 of the Indian Penal Code. Fine could be recovered by distress and sale of both moveable and immoveable property ; and a Court is not to issue a warrant of distress, if the offender has undergone the imprisonment in default of payment of fine, unless for special reasons to be recorded in writing.

In general an offender ought not to be required both to pay the fine and to serve the sentence in default.<sup>2</sup>

Sub-section (1), cl. (a).—The warrant issued by a Court passing a sentence, under this section<sup>2</sup> to recover fine from an offender is to be deemed as a decree for certain purposes only, and is executed according to the mode laid down in the Civil Procedure Code, 1908, but s. 48, Civil Procedure Code, does not apply to such a warrant. The period during which such a warrant could be executed is governed

<sup>1</sup> *Horace Lyall*, (1902) 29 Cal. 286, / <sup>2</sup> *Digambar Bhavarthi*, (1934) 37 Bom. L. R. 99, 59 Bom. 350.

by s. 70 of the Indian Penal Code and not by the Indian Limitation Act. A darkhast filed after six years to recover fine by sale of immoveable property of the offender is, therefore, time-barred under s. 70. Indian Penal Code.<sup>1</sup>

1. 'Belonging to the offender.'—The words do not mean belonging exclusively to the offender. According to the Bombay High Court the share of the accused in the movable property of a joint Hindu family of which he is a member can be attached.<sup>2</sup> The Patna and the Calcutta High Courts have held that such a share cannot be attached.<sup>3</sup> The Patna High Court has subsequently held that an application by the members of a joint Hindu family for a refund of money belonging to the joint family and attached under sub-s. (1) (a) for the levy of a fine imposed upon an individual member of the family is not maintainable after the money realised is credited to the Crown.<sup>4</sup>

387. A warrant issued under section 386, sub-section (1). clause (a), by any Court may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the attachment and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

388. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

<sup>1</sup> *Collector of Broach v. Ochhawal Bhikhalal*, (1940) 43 Bom. L. R. 122, [1941] Bom. 147.

<sup>2</sup> *Shivlingappa v. Gurlingaoa*, (1925) 27 Bom. L. R. 1368, 49 Bom. 906.

<sup>3</sup> *Rajendra Prasad Missir*, (1932) 12 Pat. 29, F.B.; *Pramathabhooshan Ray*, (1933) 60 Cal. 982.

<sup>4</sup> *Suraj Narain Prasad Singh*, (1933) 18 Pat. 317, S.B.

**COMMENT.**—Sub-section (1) empowers the Court to give time, not exceeding thirty days, to an offender who has been sentenced to pay a fine. If the fine is not paid within the time fixed, the Court directs the sentence of imprisonment to be carried into execution.

**389.** Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office.

**390.** When the accused is sentenced to whipping only, the sentence shall subject to the provisions of section 891 be executed at such place and time as the Court may direct.

Execution of sentence of whipping, in addition to imprisonment.

**391.** When the accused—

(a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or

(b) is sentenced to whipping in addition to imprisonment, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal is made within that time, until the sentence is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment when the term of imprisonment to which he is sentenced is less than three months.

**392.** (1) In the case of a person of or over sixteen years of age whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person, as the Provincial Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instruments, as the Provincial Government directs.

(2) In no case shall such punishment exceed thirty stripes and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes.

**393.** No sentence of whipping shall be executed by instalments: and none of the following persons shall be punishable with whipping, namely:

(a) females;

(b) males sentenced to death or to transportation, or to penal servitude, or to imprisonment for more than five years;

(c) males whom the Court considers to be more than forty-five years of age.

**COMMENT.**—A sentence of whipping cannot be enhanced and no sentence of whipping can be executed by instalments.

**394. (1)** The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

**(2)** If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

**395. (1)** In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, or to a fine not exceeding five hundred rupees, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

**(2)** Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term or a fine of an amount exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

**COMMENT.**—This section enables a Court to award a sentence of fine in lieu of a sentence of whipping.

The imprisonment which a Court can award in lieu of whipping must not exceed the term which the Court is competent to award under s. 32.

**396. (1)** When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

**(2)** If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

**(3)** When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

*Explanation.*—For the purposes of this section—

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment ;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement ; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

COMMENT.—The object of this section is to provide that the severer sentence must be undergone first.

397. When a person already undergoing a sentence of imprisonment,<sup>1</sup> penal servitude or transportation, is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced,<sup>2</sup> unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence :

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced :

Provided, further, that where a person who has been sentenced to imprisonment by an order under section 128 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

COMMENT.—This section fixes the time from which a sentence passed on an offender who is already undergoing another sentence should run.

The High Court has power to direct separate sentences of separate trials to run concurrently.<sup>1</sup>

1. 'Imprisonment.'—The word 'imprisonment' includes imprisonment in default of payment of fine.<sup>2</sup> Imprisonment in default of payment of fine cannot be concurrent with a substantive sentence of imprisonment, whether the sentence of imprisonment in default of payment of fine and the substantive sentence of imprisonment are passed in the same proceeding or in different cases at different times, as, where an accused is already undergoing a sentence of imprisonment in default of payment of fine and a substantive sentence of imprisonment is passed subsequently in a different case.<sup>3</sup>

2. 'At the expiration of the imprisonment .... to which he has been previously sentenced.'—Where two sentences are passed on an accused, the second to commence on the expiration of the first, and the first is subsequently set aside, the second sentence commences from the date of conviction, and the

<sup>1</sup> *Nagappa*, (1931) 33 Bom. L. R. L. R. 277, [1939] Bom. 160.  
1163.

<sup>2</sup> *Punjaji Lalaji*, (1938) 41 Bom. <sup>3</sup> *Ibid.*

period of imprisonment already undergone in respect of the first sentence will be deemed to have been in respect of the second sentence.<sup>1</sup>

**Proviso 1.**—This proviso deals with the case where a person undergoing a sentence of imprisonment is sentenced to transportation.

**Proviso 2.**—This proviso says that if a person who is imprisoned under s. 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed *prior to the making of such an order*, the latter sentence is to commence immediately.

**Cases.**—The accused was called upon on October 20, 1920, to 'furnish security, under s. 118, Criminal Procedure Code; and on failure to furnish it, he was ordered on October 29, 1920, under s. 123 of the Code, to be detained in prison for one year. Between October 20 and 29, he was sentenced to imprisonment for seven years for an offence under the Penal Code. On the expiry of this sentence, a question arose whether the accused was entitled to be set at liberty. It was held that he was entitled to be released for the order under s. 123 had commenced to run from October 20.<sup>2</sup>

**398. (1)** Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Saving as to sections 396 and 397.

**(2)** When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

**399. (1)** When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Provincial Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Provincial Government prescribes with regard to the discipline and training of persons confined therein.

**(2)** All persons confined under this section shall be subject to the rules so prescribed.

**(3)** This section shall not apply to any place in which the Reformatory Schools Act, 1897, is for the time being in force.

**COMMENT.**—This section empowers a Court to send any sentenced person of either sex under fifteen years of age to a reformatory. Unless a person is sentenced he cannot be so sent.

**400.** When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Return of warrant on execution of sentence.

<sup>1</sup> *Babibai*, (1942) 44 Bom. L. R. 807.

<sup>2</sup> *Aba Farid*, (1926) 29 Bom. L. R. 709.

## CHAPTER XXIX. .

## OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

401. (1) When any person has been sentenced to punishment for an offence, the Provincial Government may, at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Provincial Government for the suspension or remission of a sentence, the Provincial Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Provincial Government, not fulfilled, the Provincial Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4A) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right of His Majesty or of the Central Government when such right is delegated to him to grant pardons, reprieves, respites or remissions of punishment.

(5A) Where a conditional pardon is granted by His Majesty or, in virtue of any powers delegated to it, by the Central Government, any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The Provincial Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

COMMENT.—This section applies to any punishment for an offence. An order of unconditional remission of sentence under this section cannot be rescinded except in cases of fraud or mistake. The powers exercisable under this section vest in the Provincial Government and not in an individual Minister. All the formalities which are, therefore, necessary for the release of a prisoner or the remission



of his sentence are equally necessary for the cancellation of the order of the remission of sentence.<sup>1</sup>

**Sub-section (4A).**—The object of this sub-section is to make it clear that the power to remit sentences conferred by this section can be exercised in the case of orders of a penal nature, e.g., orders under s. 565 of the Code.<sup>2</sup>

**Sub-section (5A).**—The object of this sub-section is to enable any condition upon which a pardon has been granted by His Majesty or by the Central Government when such power has been delegated to it, to be enforced in the same way as a sentence of a Court.<sup>3</sup>

**402. (1)** The Provincial Government may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it :—  
death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

**(2)** Nothing in this section shall affect the provisions of section 54 or section 55 of the Indian Penal Code.

**COMMENT.**—Compare ss. 54 and 55 of the Indian Penal Code which confer similar powers on the Central Government or the Provincial Government within which the offender is sentenced.

**402A.** The powers conferred by sections 401 and 402 upon the Provincial Government may, in the case of sentences of death, also be exercised by the Governor General in his discretion.

## CHAPTER XXX.

### OF PREVIOUS ACQUITTALS OR CONVICTIONS.

**403. (1)** A person who has once been tried<sup>1</sup> by a Court of competent jurisdiction<sup>2</sup> for an offence<sup>3</sup> and convicted or acquitted<sup>4</sup> of such offence shall, while such conviction or acquittal remains in force,<sup>5</sup> not be liable to be tried again for the same offence,<sup>6</sup> nor on the same facts for any other offence<sup>7</sup> for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

**(2)** A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).

**(3)** A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried

for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act,<sup>a</sup> 1897, or section 188 of this Code.

*Explanation.*—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

#### ILLUSTRATIONS.

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

(f) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

**COMMENT.**—This section lays down that a person once convicted or acquitted cannot be tried for the same offence. It is based on the maxim *nemo debet bis vexari*, which means that a person cannot be tried a second time for an offence which is involved in the offence with which he was previously charged. In order to bar the trial of any person already tried, it must be shown (1) that he has been tried by a competent Court for the same offence or one for which he might have been charged or convicted at that trial, on the same facts; (2) that he has been convicted or acquitted at the trial; and (3) that such conviction or acquittal is in force.<sup>1</sup>

<sup>1</sup> See *Government of Bombay v. Abdu Wahab*, [1945] 47 Bom. L. R. 998, F.B.

The provisions of the Code upon the question of previous acquittal are different from the principles underlying the English doctrine of *autrefois acquit*. The Code makes a clear distinction between "discharge" and "acquittal". The rule of English law, regarding the accused to have been tried as well as acquitted in order to bar further proceedings and embodied in this section, is inapplicable to statutory acquittals under ss. 494, 247 and 345.<sup>1</sup>

**Sub-section (1).**—This sub-section operates in cases covered by ss. 236 and 237, and not in cases covered by s. 235 (1). Hence, where the accused, are charged with and convicted of the offence of conspiracy (s. 120B, I. P. C.) they can again be charged with and convicted of the separate offences of cheating (s. 420, I. P. C.) committed by them in pursuance of that conspiracy under this sub-section.<sup>2</sup>

The effect of this section in a conspiracy matter is that a man cannot be tried again for the particular entry into the conspiracy for which he has already been tried. The section does not say that for any fresh entry into the conspiracy he cannot be tried. Otherwise the effect of a trial and conviction for one entry into the conspiracy would be to confer an immunity against any subsequent criminal proceedings, no matter how actively the man might be in connection with the same conspiracy, after he had undergone his sentence. In other words, a conviction on a conspiracy charge would operate as conferring an unqualified license on the person convicted to resume his nefarious activities in connection with the same conspiracy and continue so doing for the rest of his life.<sup>3</sup>

1. 'Tried.'—There must be a trial of the accused, that is, hearing and determination on the merits. In a summons-case the accused is said to be "tried" when he appears and answers to the intimation under s. 242 which takes the place of a formal charge. In a case triable exclusively by a Court of Session, the trial commences after a charge is framed under s. 210. There is no trial before the charge is framed but an inquiry only.

Once a summons has been issued to the accused and s. 247 has come into operation the accused must be deemed to have been tried within the meaning of this section, though the summons may not have been served and the accused may not have appeared.<sup>4</sup>

The words "who has once been tried" mean against whom proceedings have been commenced in Court, i.e., against whom the Court has taken cognizance of the offence and issued process.<sup>5</sup>

If there is a gross irregularity or illegality in a trial, such trial will not bar a re-trial.

2. 'Court of competent jurisdiction.'<sup>6</sup>—The acquittal or conviction, in order to an actual defence to the charge, must be by a Court of competent jurisdiction.<sup>6</sup> If the Court which held the first trial was not competent to try the charge put forward at the second trial, this section would have no application.<sup>7</sup> A trial by a Court not having jurisdiction is void *ab initio*, and the accused, if acquitted,

<sup>1</sup> *Bhupatibhooshan Mukherji v. Amiyabhooshan Mukherji*, sup. Cal. 1119. <sup>2</sup> *Dudekula Lal Sahib*, (1917) 40 Mad. 576. See *Kotayya*, (1917) 40, Mad. 977, f. n.

<sup>3</sup> *Ochhawlal Bhikhabhai*, (1933) 35 Bom. L. R. 985. <sup>4</sup> *Samsudin*, (1896) 22 Bom. 711; *Abdul Ghani*, (1902) 29 Cal. 412.

<sup>5</sup> *Purnananda Das Gupta*, [1939] 1 Cal. 1. <sup>6</sup> *Bhoopatibhooshan Mukherji*, sup.

<sup>7</sup> *Purnananda Das Gupta*, sup.

is liable to be re-tried.<sup>1</sup> Jurisdiction, is legal authority to determine the case on the merits. Where the Court has no jurisdiction over the subject-matter it is not competent to try [see illustrations (f) and (g) ].

**Case.**—The accused was convicted by a Magistrate who had no jurisdiction to try the case as it was exclusively triable by a Court of Session. On appeal the Sessions Judge, setting aside the conviction, did not order him to be re-tried but merely discharged him. Subsequently, fresh proceedings were instituted and the accused was committed to the Sessions. It was held that the discharge was no bar to the fresh proceedings as there had in fact been no trial.<sup>2</sup>

3. 'For an offence.'—The act or omission against which proceedings are taken must amount to an offence. A person against whom security proceedings are taken under s. 107 cannot be said to have committed an offence. Security proceedings do not come within the purview of this section.<sup>3</sup>

4. 'Convicted or acquitted.'—Second trial is barred when the accused is convicted or acquitted, that is, the cause must have been heard and determined. There is a distinction between "acquittal" and "discharge". Discharge of the accused does not amount to an acquittal. A person is said to be discharged when he is relieved from legal proceedings by an order which does not amount to judgment which is the final order in a trial terminating in either conviction or acquittal of the accused. An order of discharge is not a judgment. Discharge may take place either after the preliminary inquiry and previous to the committal to the Sessions Court, or during a trial before a Magistrate before the accused has been called upon to plead. When there is no prima facie case against the accused and he has not been put on his defence, nor any charge drawn up against him to which he could plead, he should be discharged and not "acquitted". A man who in law is only "discharged" may again be charged with the same offence if other testimony should be discovered; but a man who has been "acquitted" can never be put on his trial again for the offence of which he has been acquitted. A discharge leaves the matter at large for all purposes of judicial inquiry, and there is nothing to prevent the Magistrate discharging the accused from inquiring again into the case.<sup>4</sup>

There is no provision in the Code to the effect that the dismissal of a complaint shall be a bar to a fresh complaint being entertained so long as the order of dismissal remains unreversed.<sup>5</sup> The Calcutta High Court has held in a full bench case that a Presidency Magistrate is competent to re-hear a warrant-case in which he has discharged the accused.<sup>6</sup> Subsequently in another full bench case it has laid down that in a warrant-case a Magistrate who has discharged the accused is competent, without an order being passed under s. 487 setting aside the order of discharge, to take fresh proceedings against the accused in respect of the same offence.<sup>7</sup>

A wrong order of acquittal will not bar a subsequent trial. But if a person who ought to have been acquitted is erroneously ordered to be discharged only, the

<sup>1</sup> *Jivram Dankarji*, (1915) 40 Bom. 97, 17 Bom. L. R. 881; *Ambaji*, (1928) 30 Bom. L. R. 880, 52 Bom. 257; *Shanker Tulshirani*, (1928) 30 Bom. L. R. 1435, 53 Bom. 69.

<sup>2</sup> *Abdul Ghani*, (1902) 29 Cal. 412.

<sup>3</sup> *Muthia Moopan*, (1911) 36 Mad. 315; *Imam Mondal*, (1900) 27 Cal. 662; *Bhagwat Singh*, (1926) 48 All. 501; *Suheg Singh*, [1948] Lah. 365.

<sup>4</sup> *Amanat Kadar*, (1928) 31 Bom.

L. R. 146; *Chinna Kaliappa Gounden*, (1905) 29 Mad. 126, F.B.; *Ram Bharos v. Baban*, (1914) 36 All. 129.

<sup>5</sup> *Dolegobind Dass*, (1900) 28 Cal. 211.

<sup>6</sup> *Dwarka Nath Mondal v. Beni Madhab Banerji*, (1901) 28 Cal. 652, F.B.

<sup>7</sup> *Mir Ahwad Hossein v. Mahomed Askari*, (1902) 29 Cal. 726, F.B.; *U Ba Thein*, (1930) 8 Ran. 372.

order of discharge will be treated as one of acquittal and will bar a re-trial.

5. 'While such conviction or acquittal remains in force.'—That is, so long as the judgment or order has not been set aside by a Court of appeal or revision. If it is set aside, the accused can again be put on his trial, because the previous trial is annulled thereby.

6. 'Shall . . . not be liable to be tried again for the same offence.'—The first conviction or acquittal is a bar to a second trial if the offence is the same. If the offence be different and based on different facts, though based on the same evidence, the previous trial does not bar a second trial. "Same offence" means not the same *eo nomine* but the same criminal act or omission.

7. 'Nor on the same facts for any other offence.'—This is a very important limitation. The offence must be the same or some other for which a separate charge might have been made at the first trial on the same facts. If a charge might have been made for another offence in the first trial, the accused cannot be tried again for such offence. The protection afforded by this section extends to different offences only when they are based on the same facts and fall within the provisions of s. 236 or s. 237.<sup>1</sup>

Cases.—Where a Magistrate acquitted the accused on a charge of mischief on the ground that title to the tree in respect of which mischief was charged was with the accused rather than with the complainant, it was held that further inquiry was barred under this section, in regard to a charge of theft as the facts were common to both offences and had been found in favour of the accused.<sup>2</sup> The accused went into a graveyard and cut down a tree. They were convicted under s. 207, Penal Code, for having hurt the religious feelings of Mahomedans. They were acquitted on appeal but were ordered to be prosecuted for theft. It was held that no further action could be taken against them as the act was one though it might have had two distinct results.<sup>3</sup> Where the accused was acquitted on a charge under s. 160, Penal Code, it was held that a subsequent trial on the same facts under s. 61 (a) of the Bombay District Police Act was barred.<sup>4</sup> Where a person was convicted on a charge under s. 411 of the Penal Code of having been dishonestly in possession of property knowing it to be stolen, it was held that he could not be subsequently convicted under s. 414 of the Penal Code of voluntarily assisting in concealing other property stolen on the same occasion from the same person.<sup>5</sup> Where the accused was acquitted on a charge under s. 211 of the Penal Code, it was held that he could not be tried subsequently on the same facts for an offence under s. 182 of the Penal Code.<sup>6</sup> Where the accused was tried for abetment of theft and acquitted, and the trial Judge found that he was guilty of receiving stolen property but refrained from convicting him of that offence in the absence of a specific charge, it was held that he could not be put up again on a charge of receiving stolen property.<sup>7</sup> Where the accused was tried and acquitted of the offence of criminal breach of trust, it was held that he could not subsequently be tried on the same facts for falsification of accounts.<sup>8</sup>

Where the accused who was tried for criminal breach of trust as a public servant in respect of Rs. 12 was acquitted, but was re-tried for the same offence in

<sup>1</sup> *Subedar Krishnappa*,  
Bom. L. R. 15.

<sup>2</sup> *Erramreddi*, (1885) 8 Mad. 296.

<sup>3</sup> *Fateh Muhammad*, (1926) 8 Lah.

<sup>4</sup> *Kallasani*, (1927) 29 Bom. L. R.  
1478.

<sup>5</sup> *Mian Jan*, (1904) 28 All. 813.

<sup>6</sup> *Ganapathi Bhatta*, (1911) 36 Mad.

308.

<sup>7</sup> *Pundalik*, (1924) 26 Bom. L. R.

440.

<sup>8</sup> *Jhabbar Mull*, (1922) 49 Cal. 924.

respect of another item of Rs. 10, misappropriated during the same period as that to which the Rs. 12 related, it was held that the previous acquittal did not operate as a bar at the second trial.<sup>1</sup>

**Sub-section (2).**—Where the charge on the second trial is for a distinct offence the trial is not barred. See s. 235 of this Code and s. 71 of the Indian Penal Code.<sup>2</sup>

**Cases.**—The accused was first tried on a charge of abetment of forgery of a document under ss. 467 and 109 of the Penal Code, and was acquitted by the Sessions Court. He was again tried by the Sessions Court in respect of the same document, for using as genuine a forged document under s. 471 of the Penal Code, and was convicted. It was held that he could be tried as the case fell under this sub-section.<sup>3</sup> A conviction for affray (s. 160, Penal Code) on a prosecution initiated by the police was no bar to a subsequent trial for causing hurt (s. 323, Penal Code) on a complaint laid by the party injured.<sup>4</sup>

**Sub-section (3).**—The effect of this sub-section is illustrated by illa. (c) and (e) to the section. The facts or circumstances must be such as to indicate a different kind of offence of which there could be no conviction at the first trial. The new evidence must constitute a different kind of offence for which the accused could not have been tried at the first trial. The new facts or consequences must have occurred since the conviction or acquittal at the first trial. For, if the new facts or consequences were known to the Court at the time of the first trial, a second trial for an offence constituted by the new facts would be barred. A and B were charged for causing simple injury (s. 423, Penal Code) to C. The case was compounded and both the accused persons were acquitted. Subsequently C died of the injury inflicted by A and B. It was held that A and B could be tried for culpable homicide (s. 304 Penal Code).<sup>5</sup>

**Sub-section (4).**—Illustrations (f) and (g) illustrate the significance of this sub-section. In ill. (f) the offence of robbery is not triable by a Magistrate of the second class. It is triable only by a Court of Session, Presidency Magistrate, or Magistrate of the first class. In ill. (g), the offence of dacoity is not triable by a Magistrate of the first class. But it is triable only by a Court of Session.

**Case.**—The accused was placed before a Magistrate, charged with an offence under s. 304, Penal Code. The Magistrate finding that the offence was not made out, charged the accused with an offence under s. 323 of the Code and convicted and sentenced him accordingly. The District Magistrate ordered the Magistrate to commit the case to the Court of Session for trial for an offence under s. 304. It was held that the previous conviction under s. 323 was no bar to the trial under s. 304 which the Magistrate was not competent to try.<sup>6</sup>

The accused was tried and convicted for an offence under s. 211 of the Penal Code, but was acquitted by the High Court on the ground that the case did not fall under s. 211. The High Court, however, remarked that s. 182 of the Penal Code probably governed the case but it was not competent to take cognizance of the offence in the absence of a complaint in writing of the Public Officer concerned as required by s. 195 (1) (a) of the Criminal Procedure Code. The Public Officer concerned put in a complaint on the same facts against the accused who pleaded that the trial was barred under sub-s. (1) of this section. It was held that the

<sup>1</sup> *Kashinath*, (1909) 12 Bom. L. R. L. R. 881, 40 Bom. 226.

<sup>2</sup> *Dagdi Dagdya*, (1927) 39 Bom. L. R. 342.

<sup>3</sup> *Jiram Dankarji*, (1915) 17 Bom.

<sup>4</sup> *Ram Sukh*, (1924) 47 All. 284.

<sup>5</sup> *Sailani*, (1913) 36 All. 4.

<sup>6</sup> *Zuji Manu Bibri*, (1903) 5 Bom. L. R. 125.

plet of *autrefois acquit* as contemplated by sub-s. (1) of this section did not apply as the former Court was not competent to try the offence within the meaning of this sub-section and the case was governed by the exception laid down in this sub-section.<sup>1</sup>

Sub-section (5).—8. 'Section 26 of the General Clauses Act.'—This section provides: "Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence." An illegal conviction under an Act is no bar to a prosecution under the Penal Code.

Explanation.—The cases referred to in the Explanation are all cases where there was no trial determining the matter. None of the orders here specified can be regarded as constituting an acquittal in a trial.

As to discharge in summons-cases, see s. 249; in warrant-cases, see s. 253.

## PART VII.

### OF APPEAL, REFERENCE AND REVISION.

#### CHAPTER XXXI.

##### OF APPEALS.

Unless otherwise provided, no appeal to lie.  
in force.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being

COMMENT.—The word "appeal" means the right of carrying a particular case from an inferior to a superior Court with a view to ascertain whether the judgment is sustainable. An appeal is a creature of statute and only exists where expressly given. This Chapter declares what sentences or orders are appealable. There are other provisions of the Code which also give the right of appeal, e.g., ss. 250, 405, 406, 423 (d), 486, 515, 520, 524, etc.

Where the right of appeal is not exercised, no proceedings by way of revision can be entertained.

Appeal to Privy Council.—The Judicial Committee is not a Court of criminal appeal or of criminal review. The Sovereign in Council does not act, in the exercise of the prerogative right to review the course of justice in criminal cases, in the free fashion of a fully constituted Court of criminal appeal. The exercise of the prerogative takes place only where it is shown that injustice of a serious and substantial character has occurred.<sup>2</sup> There are very special and exceptional circumstances in which leave to appeal to the Privy Council is granted in criminal

<sup>1</sup> *Ram Rakha*, [1938] Lah. 373.

<sup>2</sup> *Dal Singh*, (1917) 44 I. A. 187,

140, 19 Bom. L. R. 510, 44 Cal. 876.

cases. The rule for granting special leave is thus stated in *Dillet's*<sup>1</sup> case, which is followed in several subsequent cases: "His Majesty will not review or interfere with the course of criminal proceedings, unless it is shewn that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done."

The Privy Council will not interfere in criminal appeals unless it can be shown that there was no proper trial at all, that the forms of all judicial procedure were disregarded, not merely according to local ordinances, but according to the unvarying character which is common to all. If a Court in India commits a mistake in the exercise of its jurisdiction, the Privy Council cannot take cognizance of a mere mistake. It may interfere only where justice has been set at naught.<sup>2</sup> It will grant leave to appeal where there is a pronounced difference of opinion in the High Courts with reference to a section of the Criminal Procedure Code which is of vital importance to accused persons.<sup>3</sup> Misdirection by a Judge, either in leaving a case to a jury where there is no evidence or founded on an incorrect construction of the Penal Code, even if established, is insufficient as a ground for leave to appeal to the Privy Council, especially where no miscarriage of justice has resulted.<sup>4</sup> There must be something which, in the particular case, deprives the accused of the substance of a fair trial and the protection of the law, or which, in general, tends to divert the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in future.<sup>5</sup> There must be something so irregular, or so outrageous, as to shake the very basis of justice.<sup>6</sup> A mere mistake on the part of the Court below, as for example, in the admission of improper evidence, will not suffice if it has not led to injustice of a grave character. Nor do the Judicial Committee advise interference merely because they themselves would have taken a different view of evidence admitted. Such questions are, as a general rule, treated as being for the final decision of the Courts below.<sup>7</sup>

The Privy Council will not interfere because its conclusion as to guilt or innocence might differ from that of the jury. It will interfere in cases where there are no grounds on the evidence taken as a whole, upon which any tribunal could properly, as a matter of legitimate inference, arrive at a conclusion that the appellant was guilty, and any conclusion on the available materials would be, and is, mere conjecture or guess, which are not, in law or justice, permissible grounds on which to base a verdict.<sup>8</sup>

The above principles are again summarised by Viscount Simon L. C. in *Muhammad Nawaz v. King-Emperor*<sup>9</sup> for the guidance of applicants to the Privy Council.

Appeal from order rejecting application for restoration of attached property.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

<sup>1</sup> (1887) 12 App. Cas. 459, 487; *Carew*, [1897] A. C. 719; *Bal Gangadhar Tilak*, (1908) 33 Bom. 221, 10 Bom. L. R. 973; *Arnold*, (1914) 41 Cal. 1023, 16 Bom. L. R. 544, 41 I. A. 149; *Ibrahim*, [1914] A. C. 599; *Shah Ahmed*, (1925) 28 Bom. L. R. 158, P.C.; *Abdul Rahman*, (1926) 5 Ran. 53, 29 Bom. L. R. 813, 54 I. A. 96; *Scott*, (1935) 13 Ran. 141; *Seneviratne*, (1936) 39 Bom. L. R. 1, P.C.

<sup>2</sup> *Hanmant Rao*, (1924) 27 Bom.

L. R. 704, 49 Bom. 455, P.C.

<sup>3</sup> *Nasir Ahmad* (No. 2), (1936) 38 Bom. L. R. 987, 17 Lah. 629, P.C.

<sup>4</sup> *Macrea*, (1898) 20 I. A. 90, 15 All. 310.

<sup>5</sup> *Seneviratne*, sup.

<sup>6</sup> *Mohindar Singh*, (1932) 59 L. A. 233, 235, 13 Lah. 479.

<sup>7</sup> *Inayat Khan*, (1936) 38 Bom. L. R. 764, 17 Lah. 488, P.C.

<sup>8</sup> *Seneviratne*, sup.

<sup>9</sup> (1941) 68 I. A. 126, 44 Bom. L. R. 8.



**COMMENT.**—Section 89 relates to the appearance of a person whose property has been attached or sold in consequence of its being supposed that he has absconded or is concealing himself to avoid execution of a warrant of arrest.

**406.** Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

- (a) if made by a Presidency Magistrate, to the High Court ;  
 (b) if made by any other Magistrate, to the Court of Session ;

Provided that the Provincial Government may, by notification in the Official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session :

Provided, further, that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 128.

**COMMENT.**—This section only applies to appeals from orders requiring security for keeping the peace or for good behaviour.

The second proviso says that if proceedings are laid before a Sessions Judge under s. 128, no appeal lies.

**406A.** Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,—

(a) if made by a Presidency Magistrate, to the High Court ;

(b) if made by the District Magistrate, to the Court of Session ; or

(c) if made by a Magistrate other than the District Magistrate, to the District Magistrate.

**COMMENT.**—This section gives a right of appeal against an order rejecting a surety.

**407. (1)** Any person convicted on a trial held by any Magistrate of the second or third class,<sup>1</sup> or any person sentenced under section 849 or in respect of whom an order has been made or a sentence has been passed under section 880 by a Sub divisional Magistrate of the second class, may appeal to the District Magistrate.

(2) The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Provincial Government to hear such appeals, and thereupon such appeal or class of appeals may be presented to such subordinate Magistrate, or, if already presented to the District Magistrate, may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal<sup>2</sup> or class of appeals so presented or transferred.

**COMMENT.**—This section deals with appeals from conviction only.

1. 'Any Magistrate of the second or third class.'—An appeal lies under this section from a conviction of a Bench of Magistrates invested with second or third class powers.<sup>1</sup>

Sub-section (2).—The District Magistrate can entrust the work of hearing appeals to another Magistrate, but he cannot entrust under this section any revisional work to another Magistrate.<sup>2</sup>

2. 'May withdraw . . . any appeal.'—A District Magistrate has jurisdiction to withdraw a part-heard appeal to his own file from the file of a Sub-divisional Magistrate, by whom it has been heard in part.<sup>3</sup>

408. 'Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 849 or in respect of whom an order has been made or a sentence has been passed under section 380 by a Magistrate of the first class, may appeal to the Court of Session :

Provided as follows :—

(a) [Omitted by s. 23 of Act XII of 1923] ;

(b) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under section 30 passes any sentence of imprisonment for a term exceeding four years, or any sentence of transportation, the appeal of all or any of the accused convicted at such trial<sup>4</sup> shall lie to the High Court ;

(c) when any person is convicted by a Magistrate of an offence under section 124A of the Indian Penal Code, the appeal shall lie to the High Court.

COMMENT.—The Madras High Court has held that where a case is taken up for trial by a Magistrate of the second class and before judgment is pronounced he is invested with first class powers a conviction by him in the case would be a conviction only as a Magistrate of the first class.<sup>5</sup> Similarly the Bombay High Court has held that where a case is taken cognizance of by a Magistrate who has second class powers, but who is since invested with first class powers and a great part of the trial takes place before him after such investment, an appeal from the conviction by such Magistrate lies to the Court of Session and not to the District Magistrate.<sup>6</sup> The Allahabad High Court has taken a different view. It has held that the trial of a case includes those stages of the proceedings of the case in which the parties thereto are entitled to take part. The 'trial,' therefore, extends to the recording of evidence and to the hearing of arguments. But so far as the act of the preparation and delivery of judgment is concerned, it is an act of the Judge and the Judge alone, and the parties can take no part in the same. Judgment is therefore no part of the trial and is outside the scope of a 'trial' as contemplated by the Code. A trial was held by an Assistant Sessions Judge ; after he had recorded the evidence in the Court and heard the arguments, but before writing and delivering his judgment, he was invested with the powers of an Additional Sessions Judge. It was held that an appeal

<sup>1</sup> *Narayanasoni*, (1885) 9 Mad. 36. <sup>5</sup> Mad. 257. Contra, *Nag Paw*, (1908)

<sup>2</sup> *Harku v. Sitaram*, (1900) 2 Bom. L. R. 536.

<sup>4</sup> L. B. R. 239, 8 Cr. L. J. 48.

<sup>3</sup> *Alagu Ambalam*, (1908) 31 Mad. 277.

<sup>6</sup> *Magantlal*, (1927) 29 Bom. L. R. 482 ; *Kisan Sakharan Patil*, (1942) 45 Bom. L. R. 74.

<sup>5</sup> *Venkata Reddy v. Ramayya*, (1927)

from the conviction lay to the Sessions Judge and not to the High Court, as the accused had been convicted "on a trial held by" an Assistant Sessions Judge within the meaning of this section; the fact that he was an Additional Sessions Judge when he wrote and delivered judgment did not affect the question.<sup>1</sup>

**Proviso (b).—**An appeal from conviction and sentence of less than four years' imprisonment by an Assistant Sessions Judge lies to the Sessions Judge and not to the High Court.

1. 'Of all or any of the accused convicted at such trial.'<sup>2</sup>—In a trial in which more than one person are accused, and in which by reason of the sentences passed an appeal lies in the case of some persons to the Sessions Judge and of others to the High Court, the appeals of all lie to the latter tribunal.<sup>3</sup>

**Concurrent sentences.**—The term "aggregate sentences" as used in sub-section (j) of s. 33 of the Code applies only to consecutive and not to concurrent sentences. Where an Assistant Sessions Judge passes sentences upon an accused, each of which is four years or under, and they are ordered to run concurrently, the appeal from the conviction and sentence lies to the Sessions Court and not to the High Court.<sup>4</sup>

**Proviso (c).—**This proviso deals only with an offence under s. 124A, Penal Code. But under s. 35 (3) of the Criminal Procedure Code, if a person is convicted of several offences at one trial, the aggregate sentences are to be deemed as one sentence for the purpose of appeal. Where the accused was convicted under s. 124A, Penal Code, and sentenced to two years' rigorous imprisonment, and also convicted under s. 153A, Penal Code, and sentenced to one year's rigorous imprisonment, it was held that the aggregate sentence of three years should be considered as one sentence for the purpose of appeal, and under this proviso the appeal against the single sentence of three years under both the sections would lie to the High Court.<sup>5</sup>

**Appeals to Court of Session how heard.** 409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge :

Provided that an Additional Sessions Judge shall hear only such appeals as the Provincial Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.

**Appeal from sentence of Court of Session.** 410. Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court.

**COMMENT.**—There is an appeal to the High Court also in cases under s. 408 (b), (c) and s. 411.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court, if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.<sup>1</sup>

**COMMENT.**—No appeal lies from a sentence of six months' imprisonment and fine of two hundred rupees by a Presidency Magistrate.

1. 'Imprisonment for a term exceeding six months or to fine exceeding

<sup>1</sup> *Bakshi Ram*, [1938] All. 157.

544; *Tulsi Ram*, (1913) 35 All. 154.

<sup>2</sup> Statement of Objects and Reasons;

<sup>3</sup> *Joy Chandra Sarkar*, (1910) 38

*Lal Singh*, (1916) 38 All. 895.

<sup>4</sup> Cal. 214.

<sup>5</sup> *Tulsidas*, (1908) 11 Bom. L. R.

two hundred rupees.'—These words are confined in their meaning to substantive sentences, and do not include an award of imprisonment in default of payment of fine, the operation of which is contingent only on the fine not being paid.<sup>1</sup> No appeal therefore lies from a sentence of a Presidency Magistrate awarding six months' imprisonment and a fine of Rs. 200 or in default a further period of three months' imprisonment.<sup>2</sup>

**411A. (1)** Without prejudice to the provisions of section 449 any person convicted on a trial held by a High Court in the exercise of its original criminal jurisdiction

Appeal from sentence of High Court.

may, notwithstanding anything contained in section 418 or section 423, sub section (2), or in the Letters Patent of any High Court, appeal to the High Court—

(a) against the conviction on any ground of appeal which involves a matter of law only :

(b) with the leave of the appellate Court, or upon the certificate of the Judge who tried the case that it is a fit case for appeal, against the conviction on any ground of appeal which involves a matter of fact only, or a matter of mixed law and fact, or any other ground which appears to the appellate Court to be a sufficient ground of appeal ; and

(c) with the leave of the appellate Court, against the sentence passed unless the sentence is one fixed by law.

(2) Notwithstanding anything contained in section 417, the Provincial Government may direct the Public Prosecutor to present an appeal to the High Court from any order of acquittal passed by the High Court in the exercise of its original criminal jurisdiction, and such appeal may, notwithstanding anything contained in section 418, or section 423, sub-section (2), or in the Letters Patent of any High Court, but subject to the restrictions imposed by clause (b) and clause (c) of sub-section (1) of this section on an appeal against a conviction, lie on a matter of fact as well as a matter of law.

(3) Notwithstanding anything elsewhere contained in any Act or Regulation, an appeal under this section shall be heard by a Division Court of the High Court composed of not less than two judges, being judges other than the judge or judges by whom the original trial was held; and if the constitution of such a Division Court is impracticable, the High Court shall report the circumstances to the Provincial Government which shall take action with a view to the transfer of the appeal under section 527 to another High Court.

(4) Subject to such rules as may from time to time be made by His Majesty in Council in this behalf, and to such conditions as the High Court may establish or require, an appeal shall lie to His Majesty in Council from any order made on appeal under sub-section (1) by a Division Court of the High Court in respect of which order the High Court declares that the matter is a fit one for such appeal.

**COMMENT.**—This section is added by Act XXVI of 1943, s. 2. Under it any person convicted in a trial in the High Court Sessions may appeal against the

<sup>1</sup> *Jotharam Davay*, (1878) 2 Mad. 30; *Savba*, (1895) 20 Bom. 145.  
<sup>2</sup> *Schein*, (1889) 16 Cal. 799; *Hari* } <sup>3</sup> *Schein*, sup.

conviction (1) on a question of law ; (2) on a matter of fact or matter of mixed law and fact with the leave of the appellate Court or upon the certificate of the judge who tried the case that it is a fit case for appeal ; and (3) on any other ground which appears to the appellate Court to be a sufficient ground of appeal. He may also, with the leave of the appellate Court, appeal against the sentence passed unless the sentence is one fixed by law.

Under this section the Provincial Government may direct the Public Prosecutor to present an appeal to the High Court from any order of acquittal passed by the High Court in the exercise of its original criminal jurisdiction and such appeal may lie on a matter of fact or of law.

An appeal under this section will be heard by a Division Bench of the High Court composed of at least two judges other than the judge who held the trial.

An appeal shall lie under this section to His Majesty in Council from any order made on appeal by a Division Bench, if the High Court declares that the matter is a fit one for appeal.

The provisions of this section are not retrospective.<sup>1</sup>

**Sub-section —(1).—Cl.(b).—‘Matter of fact only.’**—Where the High Court has power under s. 307 to go into facts in trials by jury in the mofussil, it is the settled practice of the High Court to give due weight to the verdict of the jury and to limit its interference to cases where the verdict appears to be manifestly wrong or unreasonable. The same practice should be followed with greater reason in the case of verdicts of juries in the High Court itself where the jurors are expected to be more intelligent and experienced in the ways of the world and have also the benefit of the summing up of the case by a Judge of the High Court. Because extraordinary power has been given to the High Court by this section, it does not follow that the Legislature intended that it would be exercised in every case in disregard of the well recognised principles applying to all trials by jury. So long as the jury remains the sole arbiter of the facts of the trial and the Judge is bound by the unanimous verdict of the jury, the Appeal Court, acting under this section, ought to give due weight to its verdict.<sup>2</sup>

**‘Certificate of the Judge.’**—When the presiding Judge gives a certificate of appeal, due regard must be given to his implied opinion that the verdict is wrong, but even then the test of interference remains the same as in a case under s. 307. The powers with which the High Courts are invested under this section are to be exercised with the double object of preventing failure of justice in trials by jury and at the same time preventing such trials themselves from being reduced to a state of mockery. Although the power of interference given by this section is very wide, it does not follow that the High Court is bound to exercise it indiscriminately in every case. Where the verdict of the jury is based mostly on appreciation of oral evidence the appellate Court would be slow to interfere when the jury has unanimously disbelieved the witnesses whose testimony is not beyond criticism.<sup>3</sup>

Leave or certificate to appeal, under this section, should be granted only when it is thought that had the verdict been given by a mofussil jury, it would have been a fit case for a successful reference to the High Court under s. 307, and not merely because on the evidence it is possible to take a view different from that taken by the jury.<sup>4</sup>

<sup>1</sup> *Hasan Abdul Karim*, (1944) 46, (1944) 47 Bom. L. R. 363, F.S. Bom. L. R. 470.

<sup>2</sup> *Government of Bombay v. Fernandez*,

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

**412. Notwithstanding anything hereinbefore contained, where an**

No appeal in certain cases when accused pleads guilty. accused person has pleaded guilty and has been convicted by [a High Court,]\* a Court of Session or any Presidency Magistrate or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

**COMMENT.**—The plea of guilty is regarded as a waiver of the right to appeal except as to the severity or legality of the sentence.<sup>1</sup> An accused person who pleads guilty before a Magistrate and is convicted can contend that his conviction is illegal.<sup>2</sup> Plea of guilty, obtained by trickery, is not a plea of guilty, and the accused is entitled to satisfy the Court that there was in fact no plea of guilty.<sup>3</sup>

**413. Notwithstanding anything hereinbefore contained, there**

No appeal in petty cases. shall be no appeal by a convicted person in cases in which a Court of Session passes a sentence of imprisonment not exceeding one month only, or in which [a High Court passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred rupees only or in which]† a Court of Session or District Magistrate or other Magistrate of the first class passes a sentence of fine<sup>1</sup> not exceeding fifty rupees only.

**Explanation.**—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

**COMMENT.**—This section specifies the cases in which there is no appeal.

A Magistrate trying a case passed at first an unappealable sentence on the accused, but shortly afterwards, at the request of the accused, added a further sentence to the sentence passed so as to make it appealable. On appeal, the Sessions Judge struck out the added sentence, which being done, he declined to go into the merits of the case, on the ground that the original sentence passed was not open to appeal. It was held that when a Magistrate once passed a sentence exceeding one month, an appeal lay to the Sessions Court, independently of the question whether that sentence was passed legally or illegally; and the Sessions Judge being once seized of the appeal, the whole appeal became open to his Court: and he ought to have heard the appeal on the merits.<sup>4</sup>

The Calcutta High Court has held that there is no appeal from a sentence of fine not exceeding fifty rupees passed by a Magistrate who began the trial when he had second class powers only, but was invested with first class powers after the taking of evidence had been concluded but before the arguments were heard. In such circumstances the Magistrate is empowered to pass a sentence which a Magistrate with second class powers only cannot do.<sup>5</sup>

<sup>1</sup> *Jafar M. Talab*, (1880) 5 Bom. [1943] 1 Cal. 540.

85. <sup>2</sup> *Keshavlal Virchand*, (1911) 35

<sup>3</sup> *Chunilal*, (1926) 28 Bom. L. R. Bom. 418, 13 Bom. L. R. 550.

1023. <sup>4</sup> *Bijoy Kumar Kundu v. Sita*

<sup>5</sup> *Prafulla Kymar Ray Chaudhuri*, *Nath Kundu*, [1940] 1 Cal. 519.

\* The words in brackets were added by Act XXVI of 1943, s. 3.

† The words in brackets were added by Act XXVI of 1943, s. 4.

Where a first class Magistrate imposed on the petitioner fines amounting in all to Rs. 45 and disqualified him for holding a driving licence for three months for committing offences punishable under the Motor Vehicles Act, it was held that no appeal lay against the order. Section 4 of the Code, read with s. 53 of the Indian Penal Code, makes it clear that the punishment which has to be specified under s. 367 (2) of the Code cannot include an order of disqualification for holding a licence.<sup>1</sup>

1. 'A sentence of fine.'—The words 'a sentence of fine' include the cases where the aggregate sentence does not exceed a fine of Rs. 50. Where two sentences of fine are passed, it is the aggregate which is to be looked into for the purpose of determining the right of appeal. If, in the case of the aggregate exceeding Rs. 50, a right of appeal is allowed, it follows that in such cases where the aggregate is less than Rs. 50 a right of appeal is barred.<sup>2</sup>

Concurrent sentences.—For the purposes of appeal, concurrent sentences passed by the trying Magistrate on an accused must be taken in the aggregate. The petitioner and others were found guilty by a Magistrate of the first class, under ss. 143 and 365, read with s. 114, Penal Code, and each of them was sentenced to one month's rigorous imprisonment under each of the sections, the sentences to run concurrently. It was held that an appeal lay to the Court of Session.<sup>3</sup>

414. Notwithstanding anything hereinbefore contained, there shall be no appeal from certain summary convictions. No appeal from be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of fine not exceeding two hundred rupees only.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any [punishment therein mentioned is combined with any other punishment],\* but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

*Explanation.*—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

COMMENT.—This section is explanatory and clearly lays down that an appeal may be brought against any sentence referred to in s. 413 or s. 414 in which any two or more of the punishments therein mentioned are combined. Section 3(3) also declares that for the purpose of appeal aggregate sentences passed under it in case of convictions for several offences at one trial shall be deemed to be a single sentence.

The words "punishment therein mentioned is combined with any other punishment" substituted by Act VI of 1945 remove the conflicting views between different High Courts regarding combinations of different kinds of punishments.

<sup>1</sup> *Subramania*, [1945] Mad. 315.

<sup>2</sup> *Abdul Khalek*, (1912) 17 C. W.

<sup>3</sup> *Namabali Haji v. Jaiab Bibi*, N. 724 (1932) 59 Cal. 1131.

\* These words were added instead of the words "two or more of the punishments therein mentioned are combined" by Act VI of 1945, s. 8, second schedule.

**415A.** Notwithstanding anything contained in this Chapter, Special right of when more persons than one are convicted in one appeal in certain trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.

**COMMENT.**—An accused person whose sentence is unappealable has a right of appeal under this section if his co-accused has been given an appealable sentence.<sup>1</sup> But where a co-accused was directed to be released on executing a bond under s. 502, from which an appeal lay, it was held that the accused who was sentenced to six months imprisonment by a Presidency Magistrate had no right of appeal in virtue of s. 411.<sup>2</sup>

**416.** [*Saving of sentences on European British subjects*]. Omitted by s. 26 of Act XII of 1923.

**417.** The Provincial Government may direct the Public Prosecutor<sup>1</sup> to present an appeal to the High Court<sup>2</sup> from an original or appellate order of acquittal passed by any Court other than a High Court.

**COMMENT.**—Appeal from acquittal is not recognized by any civilized country. It does not exist in any of His Majesty's colonies. The law of restricting the right of appeal against a judgment of acquittal to the Provincial Government prevents personal vindictiveness from seeking to call in question judgments of acquittal by way of appeal. Government will interfere where there is a grave miscarriage of justice.<sup>3</sup> The power of appeal is one that should be exercised sparingly by Government, but the discretion to exercise that power appertains to Government and is not subject to control by the High Court.<sup>4</sup>

The Provincial Government have the same right of appeal against an acquittal as a person convicted has of appealing against his conviction and sentence, and there is no distinction between the mode of procedure and the principles upon which both classes of appeals are to be decided.<sup>5</sup>

1. 'Public Prosecutor.'—The Public Prosecutor can only file an appeal under this section. The Legal Remembrancer is not a Public Prosecutor within the meaning of this section.<sup>6</sup>

2. 'Appeal to the High Court.'—An appeal under this section can only be presented to the High Court.

Upon an appeal to the High Court under this section from an order of acquittal made by a Sessions Judge, sitting without a jury but with assessors, ss. 417, 418 and 423 give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. Before reaching its conclusions upon fact, the High Court should give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit

<sup>1</sup> *Akabbur Ali*, (1981) 59 Cal. 19.

<sup>5</sup> *Bibhuti Bhushan Bis*, (1890) 17

<sup>2</sup> *Kali Kumar Mitra*, [1937] 1 Cal. 485; *Prag Dat*, (1898) 20 All. Cal. 123.

<sup>6</sup> 459.

<sup>3</sup> *Deputy Legal Remembrancer v. Karuna Baistabi*, (1894) 22 Cal. 164.

<sup>4</sup> *Deputy Legal Remembrancer, Bengal v. Gaya Prosad*, (1913) 41 Cal. 425.

<sup>6</sup> *Sakharam Manaji*, (1919) 21 Bom. L. R. 1054.



of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.<sup>1</sup>

**418. (1)** An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury,<sup>1</sup> in which case the appeal shall lie on a matter of law only.<sup>2</sup>

Appeal on what matters admissible.

(2) Notwithstanding anything contained in sub-section (1) or in section 423, sub-section (2), when, in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial with the person so sentenced may appeal on a matter of fact as well as a matter of law.

*Explanation.*—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

**COMMENT.**—This section says in what matters appeals are admissible. Ordinary appeals lie on a matter of fact as well as a matter of law. When the trial is by jury, the appeal shall lie on a matter of law only. But even then under ss. 307 and 374 the High Court can go into facts.

In an appeal in a case tried by a jury, the grounds of appeal should clearly foreshadow the points of attack against the charge to the jury.<sup>3</sup>

1. 'Where the trial was by jury.'—These words mean "where the trial in fact was by jury" and not where the trial should have been by jury. No appeal therefore lies on matters of fact where an accused person is convicted by a jury on a charge which ought to have been tried with the aid of assessors. An accused person was charged with and tried for offences under ss. 302, 304 and 325 of the Penal Code. Under the first of these charges he was triable by a jury. Under the latter two he was triable with the aid of assessors. He was, however, tried for all the three offences by a jury who found him guilty on the third charge. The Judge accepted the verdict and sentenced the accused to four years' rigorous imprisonment. The accused appealed. It was held that under this section an appeal lay on matters of law only and not on matters of fact.<sup>4</sup> The Calcutta High Court has dissented from this view and held that in such circumstances an appeal lies on a matter of fact as well as on a matter of law.<sup>5</sup>

2. 'Appeal shall lie on a matter of law only.'—Appeal in jury cases will lie only on a question of law.<sup>6</sup>

**Sub-section (2).**—This sub-section provides that when in the case of a trial by jury, one person is sentenced to death and another to a lower punishment, the second accused may appeal on a matter of fact as well as on a matter of law.<sup>7</sup>

**419.** Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader,<sup>1</sup> and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against,<sup>2</sup> and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Petition of appeal.

<sup>1</sup> *Sheo Swarup*, (1934) 61 I. A. 398, 86 Bom. L. R. 1185, 56 All. 645.

<sup>2</sup> *Ghulam Husain*, [1945] All. 127.

<sup>3</sup> *Parbhushankar*, (1901) 25 Bom. 680, 3 Bom. L. R. 278, F.S.; *Ekkabbar Mandal*, [1937] 2 Cal. 315.

<sup>4</sup> *Golak Biharee Takal*, [1938] 1 Cal. 290.

<sup>5</sup> *Government of Bengal v. Parmeshur Mullick*, (1884) 10 Cal. 1029.

<sup>6</sup> S. O. R. (1914).

**COMMENT.**—This section prescribes the form of a petition of appeal, which corresponds with the complaint in the original proceeding, and gives jurisdiction to the appellate Court.

1. 'Presented by the appellant or his pleader.'—See s. 420. The petition is to be delivered to the proper officer of the Court either by the appellant or his pleader. Presentation of the petition by a clerk of the pleader is equivalent to a presentation by the pleader himself when it is signed by him, and he is duly authorized.<sup>1</sup> A petition is not duly presented when, having been signed by the pleader, it is handed in by a person who is not his clerk, and over whose conduct and actions he has no control.<sup>2</sup>

Presentation of an appeal by post is not a proper presentation;<sup>3</sup> nor is the deposit of a petition of appeal in a petition-box, for it may have been placed there by a person who could not legally present it.<sup>4</sup>

2. 'Accompanied by a copy of the judgment or order appealed against.'—The petition must be accompanied by a copy of the judgment or order appealed against or of the heads of the charge to the jury. But the appellate Court has a discretion to receive an appeal unaccompanied by such a copy.<sup>5</sup>

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

**COMMENT.**—This section lays down the procedure of presenting an appeal when the appellant is in jail. Presentation of the petition of appeal to the officer in charge of the jail is, for the purpose of the Indian Limitation Act, equivalent to presentation in Court.<sup>6</sup>

421. (1) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:<sup>1</sup>

Summary dismissal of appeal. Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard<sup>2</sup> in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

**COMMENT.**—This section deals with appeals presented (a) by the appellant or his pleader, (b) through the officer in charge of the jail in which the appellant is confined. In the former class of appeals, the appellant or his pleader must have a reasonable opportunity of being heard. Where, however, an appeal is presented through the officer in charge of the jail, the appellant is nearly always unrepresented. The appellate Court can summarily dismiss an appeal if it considers that there is no ground for interfering.

Once an appeal lodged whether by the accused or by the Crown has been admitted, it is not in the power of any Court, nor in the power of the appellant to

<sup>1</sup> *Karuppa Udayan*, (1896) 20 Mad. 37. <sup>4</sup> *Varadevayya*, (1896) 19 Mad. 354.  
<sup>2</sup> *Ramaswami*, (1897) 21 Mad. 114. <sup>5</sup> *Sitaram*, (1903) 5 Bom. L. R. 704.  
<sup>3</sup> *Arlappa*, (1891) 15 Mad. 137. <sup>6</sup> *Lingaya*, (1886) 9 Mad. 258.

allow it to be withdrawn. The Court is bound, once the appeal is admitted, to proceed under this section or under ss. 422 and 423 to decide it on merits.<sup>1</sup> While there are provisions for withdrawals of trials (ss. 240, 248, 333 and 404) there is no provision in the Code for the withdrawal of appeals.

1. 'May dismiss the appeal summarily.'—The word "summarily" means "in an informal manner and without the delay of formal proceedings."<sup>2</sup> In rejecting an appeal under this section the appellate Court is not bound to give any reasons for dismissal.<sup>3</sup>

An order dismissing an appeal is final and is not open to review.<sup>4</sup> Section 561A of the Code does not confer any power on the High Court to do so.<sup>5</sup> Once an appeal presented by a convict from jail has been summarily dismissed, it is not open to him to file another appeal through a counsel.<sup>6</sup>

Non-appearance of the appellant.—An appeal cannot be dismissed on the ground that no one appeared to support the petition. The Court must consider whether there is sufficient ground for interfering which implies judicial consideration on the merits.<sup>7</sup>

Proviso.—This proviso applies to appeals under s. 419 and not under s. 420 (jail appeals).

2. 'Reasonable opportunity of being heard.'—The appellant in a criminal appeal or his pleader should have a reasonable opportunity of being heard in support of the appeal.<sup>8</sup> A pleader cannot be called upon immediately on the filing of an appeal to support it.<sup>9</sup> A pleader in presenting an appeal was called upon by the District Magistrate to argue on the same day that the appeal was presented and the latter refused to grant him time to acquaint himself with the evidence in the case before he was heard. It was held that the District Magistrate's order dismissing the appeal summarily should be set aside, and the appeal should be re-heard, inasmuch as the appellant's pleader was not afforded a reasonable opportunity of being heard in support of the appeal.<sup>10</sup>

Sub-section (2).—An appeal raising questions of fact ought not to be disposed of without the original records being called for from the lower Court.<sup>11</sup>

422. If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader,<sup>1</sup> and to such officer as the Provincial Government may appoint in this behalf,<sup>2</sup> of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

<sup>1</sup> *Ghulam Mohammad*, [1942] Lah. 241, F.B.

<sup>2</sup> *Rash Behari Das v. Balgopal Singh*, (1893) 21 Cal. 92.

<sup>3</sup> *Allah Bakhsh*, (1931) 53 All. 797.

<sup>4</sup> *Bhimappa*, (1894) 19 Bom. 732; *Dahu Raut*, (1934) 61 Cal. 155; *Raju*, (1929) 10 Lah. 1.

<sup>5</sup> *Jodha*, (1940) 15 Luck. 602.

<sup>6</sup> *Khiaki*, (1922) 20 A. L. J. R. 739; *Kunhammad Haji*, (1922) 46 Mad. 382; *Pem Mahlon*, (1935) 14 Pat. 392; *Ram Jas*, (1936) 12 Luck. 30; *Jodha*, (1940) 15 Luck. 602; *Musammam Raj Kumari*, (1940) 15

Luck. 703.

<sup>7</sup> *Kunhammad Haji*, sup.; *Trimbak Balvant*, (1926) 28 Bom. L. R. 1022, 50 Bom. 673; *Rooria*, (1929) 11 Lah. 242.

<sup>8</sup> *Amana Sardar v. Nagendra Biswas* (1910) 38 Cal. 307.

<sup>9</sup> *Ramtohal Dugadh*, (1909) 36 Cal. 385; *Rangachariu*, (1905) 29 Mad. 286.

<sup>10</sup> *Gurshida*, (1903) 7 Bom. L. R. 89; *Narasimhamurti*, (1930) 53 Mad. 365.

<sup>11</sup> *Turka Hussain*, (1924) 48 Mad. 385.

and, in cases of appeals under [section 411A, sub-section (2), or]\* section 417, the Appellate Court shall cause a like notice to be given to the accused.

**COMMENT.**—This section provides for the case where the appeal is not dismissed summarily. All the grounds taken in the petition of appeal are open for consideration at the final hearing, and the appellant cannot be restricted to any selected ground out of those specified in his petition.<sup>1</sup>

1. 'Notice....to the appellant or his pleader.'—This is obligatory. The fact that the pleader of the accused was present in Court when an order is made admitting an appeal does not relieve the Court from the necessity of giving notice to the appellant of the day fixed for the hearing of the appeal.<sup>2</sup> This section and s. 423 do not make any provision for notice of appeal to be given to the advocate of the complainant or that he should be heard in appeal.<sup>3</sup>

2. 'To such officer as the Provincial Government may appoint in this behalf.'—Notice of appeal should be given to the proper officer of the Government. The section is imperative and the omission to give such a notice could not be treated merely as an irregularity. Where a Sub-divisional Magistrate disposed of an appeal without giving notice to the District Magistrate and acquitted the accused, the High Court set aside the order of acquittal under s. 482.<sup>4</sup> But where the District Magistrate did not object to the procedure the High Court did not interfere at the instance of the complainant.<sup>5</sup>

In an appeal against a conviction only the Crown is entitled to be served with notice, and heard. In private prosecutions, however, the Court in its discretion may allow the complainant to appeal by an advocate, but it is not in any case bound to do so.<sup>6</sup>

423. (1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record,<sup>1</sup> and hearing the appellant or his pleader, if he appears, and the Public Prosecutor,<sup>2</sup> if he appears, and, in case of an appeal under [section 411A, sub-section (2), or]\* section 417, the accused, if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal,<sup>3</sup> or may—

(a) in an appeal from an order of acquittal,<sup>4</sup> reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction,<sup>5</sup> (1) reverse the finding and sentence,<sup>6</sup> and acquit or discharge the accused, or order him to be retried<sup>7</sup> by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial,<sup>8</sup> or (2) alter the finding,<sup>9</sup> main-

<sup>1</sup> *Nagar*, (1918) 41 Cal. 406.

<sup>2</sup> *Gopal Chander Mundle*, (1881) 10 C. L. R. 57.

<sup>3</sup> *Tarapore*, [1941] Kar. 451.

<sup>4</sup> *Shiklingappa*, (1922) 24 Bom. L. R. 1150.

<sup>5</sup> *Devendra v. Shetappa*, (1923) 25 Bom. L. R. 251.

<sup>6</sup> *Paragji v. Bhagwanji*, (1939) 41 Bom. L. R. 1231; *Chunilal Bhagwanji*,

(1942) 44 Bom. L. R. 438, [1942] Bom. 536.

\* The words within brackets were added by Act XXVI of 1943, s. 5.

taining the sentence,<sup>10</sup> or, with or without altering the finding, reduce the sentence, or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, sub-section (3), not so as to enhance the same ;<sup>11</sup>

(c) in an appeal from any other order, alter or reverse such order ;

(d) make any amendment or any consequential or incidental order that may be just or proper.

(2) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury,<sup>12</sup> unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge,<sup>13</sup> or to a misunderstanding on the part of the jury of the law as laid down by him.

**COMMENT.**—This section defines the powers of the appellate Court in dealing with appeals.

**Sub-section (1). —1. 'After perusing such record.'**—The Court is bound to peruse the record, and to hear the appellant or his pleader, if he appears, before disposing of the appeal. Even if the appellant or his pleader is not present the Court is bound to go through the record itself and to decide the appeal on its merits. It cannot summarily dismiss the appeal.<sup>1</sup>

**2. 'The Public Prosecutor.'**—In criminal cases a complainant cannot claim as a matter of right to be heard as a respondent in appeal. The section does not prohibit the Court from hearing a pleader privately instructed to support the prosecution, and when the Public Prosecutor does not appear on behalf of the Crown.

**3. 'Dismiss the appeal.'**—The appellate Court can dismiss the appeal only on the merits and has no power to dismiss it summarily. It is bound to comply with the requirements of ss. 425 and 367, that is, it must write judgment.<sup>2</sup>

**Clause (a).—4. 'Appeal from an order of acquittal.'**—Appeal from acquittal lies only to the High Court at the instance of Government. See s. 417, *supra*. A Sessions Judge has no power to set aside the order of acquittal.

The High Court can deal with the entire case on an appeal against an order of acquittal, though in a jury trial and finally dispose of the same.<sup>3</sup> It is open to the High Court to uphold the order of acquittal and to convict the accused of an offence with which he was not charged in the Court below, but of which he might have been convicted under s. 237.<sup>4</sup>

**Clause (b).—5. 'Appeal from a conviction.'**—In an appeal from a conviction it is for the appellate Court as for the first Court to be satisfied affirmatively that the prosecution case is substantially true and that the guilt of the appellant has been established beyond all reasonable doubt. It is not for the appellant to satisfy the appellate Court that the first Court had come to a wrong finding.<sup>5</sup>

**6. 'Reverse the finding and sentence.'**—The word "reverse" means to make void, to set aside or annul, or turn into something completely opposite in character.<sup>6</sup> The word "finding" means the result of a judicial examination or inquiry, especially into some matter of fact. "Reverse the finding and sentence" means reverse the finding upon which the conviction is based. 'Reversal' connotes

<sup>1</sup> *Kuldip Singh*, (1920) 6 Pat. 16; *ram Mandal*, (1930) 58 Cal. 96.

*Trimbak Balwant*, (1926) 28 Bom. L. R. 1022, 50 Bom. 673; *Pohpi*, (1894) L. R. 330.

18 All. 171, F.B. <sup>2</sup> *Kanchan Mallik*, (1914) 42 Cal.

<sup>3</sup> *Gopala*, (1899) 1 Bom. L. R. 374.

<sup>4</sup> *225. Bawa Singh*, [1942] Lah. 129,

<sup>5</sup> *Government of Bengal v. Santi-* 143, F.B.

the complete annulment of a finding of guilt or innocence by the trial Court so as to convert a decision that a man is innocent into a finding of guilty or *vice versa*.<sup>1</sup> The appellate Court has no power either to come to a finding which was not within the competency of the trial court, or to pass a sentence which was beyond the jurisdiction given to the trial Court by s. 32.<sup>2</sup>

In criminal cases the Federal Court would ordinarily accept as final the conclusions of fact at which the High Court has arrived unless it can be shown that the High Court has either misread any part of the evidence or has overlooked any material portion of it.<sup>3</sup>

7. 'Order him to be re-tried.'—Re-trial should not be ordered unless there are grave reasons for doing so, e.g. where the trial was illegal, irregular or defective. When a re-trial is ordered the whole case is re-opened and the accused must be tried again on all the charges originally framed.<sup>4</sup> The appellate Court may itself try the offender, if the offence is one within the ordinary jurisdiction of the appellate Magistrate.<sup>5</sup>

The appellate Court, in setting aside a conviction and ordering a re-trial, ought not to make an order directing that a case which has originally been heard before a jury should be re-heard before a Court without a jury, unless it is justified by exceptional circumstances. Such an order is likely to have a very serious effect upon the rights of the accused, and his privilege which he has previously enjoyed of trial by a jury he ought in general to retain.<sup>6</sup>

8. 'Or committed for trial.'—This section is not limited to cases triable exclusively by the Court of Session. An appellate Court has under the section the power to order an accused person to be committed for trial by the Court of Session in cases which are not exclusively triable by the Court of Session.<sup>7</sup>

9. 'Alter the finding.'—That is, alter the conviction under a certain section to one under another and for that purpose the appellate Court may avail itself of the provisions of s. 237.<sup>8</sup> 'Alter' means change in form, without changing the underlying character of the thing to be changed. 'Alteration,' while maintaining the essential character of the finding, envisages only a change in form, that is, in the case of a conviction in the degree of guilt.<sup>9</sup> The appellate Court can, in an appeal from a conviction, alter the finding of the lower Court, and find the appellant guilty of an offence of which he has been acquitted by that Court.<sup>10</sup> A full bench of the Allahabad High Court has held that a Court of appeal is empowered under this clause to alter a finding of acquittal into one of conviction.<sup>11</sup>

The finding cannot be altered so as to convict the accused of a graver offence than that with which he was charged, unless an opportunity be given to him of defending himself, against a charge of such offence.<sup>12</sup> Similarly, it is improper to alter the

<sup>1</sup> *Bawa Singh*, [1942] Lah. 129, 143,

F. B. <sup>2</sup> *Maung E Maung*, [1940] Ran.

215. <sup>3</sup> *Piarc Dusadh*, [1944] F. C. R. 61.

<sup>4</sup> *Trimbak Balvant*, (1926) 50 Bom.

473, 28 Bom. L. R. 1022.

<sup>5</sup> *Manikka Grahani*, (1906) 30 Mad.

228. <sup>6</sup> *Hari*, (1939) 62 I. A. 174, 37

Bom. L. R. 634, 59 Bom. 490.

<sup>7</sup> *Misri Lal v. Lachmi Narain*

*Bajpie*, (1895) 23 Cal. 350, *Sukha*,

(1885) 8 All. 14, dissented from, *Abdul*

*Rahman*, (1891) 16 Bom. 580, followed.

<sup>8</sup> *Ismail Khadirsab*, (1926) 30 Bom.

L. R. 830.

<sup>9</sup> *Bawa Singh*, sup.

<sup>10</sup> *Jabanulla*, (1896) 23 Cal. 975;

*Hanuman Sarma*, (1932) 60 Cal. 179.

*Barka Jettha Majhi*, (1941) 20 Pat.

881; *Lakhan Singh*, (1934) 9 Luck.

607; *Appanna v. Pithani Mahalakshmi*,

(1911) 34 Mad. 545; *K. Bali Reddi*,

(1914) 37 Mad. 119.

<sup>11</sup> *Zamtr Qasim*, [1944] All. 403, F.B.

<sup>12</sup> *Dwarka Manjhee*, (1880) 6 C. L.

R. 427.

finding so as to convict the accused of an offence of an entirely different character.

An appellate Court when it "alters the finding, maintaining the sentence," is not bound in respect of such altered finding by such condition precedent, as for example, complaint by person aggrieved, as would be binding on a Court of first instance.<sup>1</sup>

**Case.**—The accused was charged under s. 302, Penal Code, with the offence of murder but was convicted under s. 304, and sentenced to six years' rigorous imprisonment. He appealed and the High Court issued notice to him to show cause why the conviction should not be altered to one under s. 302, Penal Code. The question for determination was whether in the absence of an appeal by the Provincial Government, it is competent for the High Court to set aside an order of acquittal under s. 302, either *suo motu* or on the application of the complainant. It was held that the High Court is competent in its appellate jurisdiction to alter the finding from s. 304 to a finding that the conviction should be under s. 302, and in the exercise of its revisional jurisdiction under s. 439, of the Code of Criminal Procedure, the High Court may then pass a sentence of death or transportation for life as the merits of the case may require.<sup>2</sup>

10. 'Maintaining the sentence.'—The appellate Court is not competent to pass a fresh sentence. It can alter the finding maintaining the sentence. The powers of an appellate Court to vary a sentence must be measured by those of the Court of first instance.<sup>3</sup>

11. 'Not so as to enhance the same.'—The appellate Court cannot enhance any sentence on appeal. Such a power to enhance the sentence is conferred only upon the High Court as a Court of revision. Where an accused person is convicted and sentenced on two separate charges, the appellate Court has no power, in appeal, to maintain the whole sentence when it reverses the conviction on one of the charges as to do so is, in effect, to enhance the sentence.<sup>4</sup>

**Cases.**—Alteration by an appellate Court of a sentence of a fine of Rs. 50, or in default two months' simple imprisonment, to a sentence of six months' rigorous imprisonment, was an enhancement of the sentence, and, as such, prohibited by this section.<sup>5</sup>

The Calcutta and the Allahabad High Courts have observed that under s. 70, Penal Code, the law does not release a person who has undergone an alternative sentence of imprisonment from liability to pay the fine and to have his property seized and sold for its realization. Both the High Courts have held that if the alternative sentence of imprisonment were undergone by the applicant, he would undergo practically the full term of imprisonment imposed and would still be liable for the fine, and that the alteration of sentence by the appellate Court therefore would amount to an enhancement of the sentence and was consequently illegal.<sup>6</sup> A Magistrate on a conviction under s. 420 of the Penal Code sentenced the accused to six months' rigorous imprisonment. On appeal the Sessions Judge reduced the substantive term of imprisonment to four months, but imposed a fine of one hundred rupees, or in default two months' further rigorous imprisonment. It was held that, inasmuch as, even after the two months' imprisonment imposed in default of payment of the fine had been served, the fine could still be exacted, the latter sentence amounted to an enhancement of the former.<sup>7</sup>

<sup>1</sup> *Gur Narain Prasad*, (1908) 25 All. 534.

<sup>2</sup> *Bawa Singh*, [1942] Lah. 129, F.B.A.

<sup>3</sup> *Muhammad Yakub Ali*, (1928) 45 All. 594.

<sup>4</sup> *Hanna*, (1896) 22 Bom. 760.

<sup>5</sup> *Lachmi Kant*, (1896) 18 All. 801.

<sup>6</sup> *Bakhal Raja v. Khirode Pershad*

*Dutt*, (1899) 27 Cal. 175.

<sup>7</sup> *Sagwa*, (1901) 28 All. 497.

The Madras and the Bombay High Courts have held that when the aggregate period of imprisonment awarded is to any extent less than the period of the original sentence the fact that the fine is imposed by the appellate Court would not in law be an enhancement of the sentence. Where, therefore, an imprisonment for one month was altered into one for five days and a fine of Rs. 40 with imprisonment in default for two weeks, it was held that the alteration was not illegal.<sup>1</sup> The accused was convicted of criminal breach of trust, and sentenced to nine months' rigorous imprisonment. On appeal, the conviction was upheld, but the sentence was altered to one of six months' rigorous imprisonment and a fine of Rs. 1,000 or in default of payment three months' further rigorous imprisonment. It was held that there was no enhancement of the sentence.<sup>2</sup> The accused was sentenced by a Magistrate to a year's rigorous imprisonment and Rs. 50 fine, or six months' further imprisonment in default. On appeal the Sessions Judge altered the sentence to one of six months' rigorous imprisonment and Rs. 500 fine, or six months' further rigorous imprisonment in default. It was held that the alteration was not an enhancement as the aggregate period of imprisonment was less than the period of the original sentence and the imposition of fine would not be an enhancement of the sentence.<sup>3</sup>

*Payment of costs.*—An order under s. 31 of the Court-fees Act directing the accused, on appeal against conviction, to pay the costs of the complainant is not an enhancement of the sentence.<sup>4</sup>

*Clause (d).—Amending of order.*—Under this clause the High Court has jurisdiction to make any amendment or any order that may be just or proper. It is necessary to make consequential or incidental order, such as orders under ss. 106, 107, 471 (1), 517, 520, 522.

Where a person was convicted of abetment of forgery by named persons who, on their appeal, were acquitted by the High Court of forgery, the High Court, on his appeal, has power under this clause to amend and alter the charge against him to abetment of forgery by a person or persons unknown if there is sufficient evidence to convict him.<sup>5</sup>

*Sub-section (2).—12. 'Verdict of a jury.'*—This sub-section restricts the grounds on which the verdict of the jury can be reversed or altered. "Verdict" means the finding of the jury.

*13. 'Is erroneous owing to a misdirection by the Judge.'*—The High Court is not authorized to alter or reverse the verdict of the jury unless it is of opinion that the verdict is erroneous owing to the misdirection by the Judge or misunderstanding on the part of the jury of the law as laid down by him. If it comes to that opinion then it has the power to reverse the verdict; but that power ought not to be lightly exercised.<sup>6</sup> The verdict of the jury is not rendered erroneous when it is due to non-direction unless it amounts to misdirection which has the positive result of misleading by the jury.<sup>7</sup> Omission to explain the law to the jury amounts to a misdirection vitiating the verdict.<sup>8</sup>

There is a divergence of opinion in some of the cases of the Calcutta High Court on the question whether in cases of trial by jury where the appeal lies on a

<sup>1</sup> *Bhaktavatsalu Naidu*, (1906) 30 Mad. 103, F.B.

<sup>2</sup> *Chagan Jagannath*, (1898) 23 Bom. 480.

<sup>3</sup> *Muhammad Hussain*, (1880) 12 Lah. 440.

<sup>4</sup> *Karuppana Pillai*, (1905) 29 Mad. 188.

<sup>5</sup> *Thakur Shah*, (1943) 70 I. A. 196,

46 Bom. L. R. 518.

<sup>6</sup> *Shambhulal*, (1908) 10 Bom. L. R. 565; *Public Prosecutor v. Bonigiri Pottigadu*, (1908) 32 Mad. 179.

<sup>7</sup> *Provincial Government, Central Provinces and Berar v. Raghuram*, [1942] Nag. 749.

<sup>8</sup> *Biru Mandal*, (1897) 25 Cal. 561.



matter of law only, the appellate Court has power, in the event of any misdirection by the Judge or admission of inadmissible evidence, to deal with the whole case on merits, and to dispose of the case finally. There are decisions holding that the High Court has no option but to set aside the verdict and direct a retrial. The later decisions show that it has such powers.<sup>1</sup> The Allahabad High Court has followed the earlier decisions of the Calcutta High Court.<sup>2</sup>

The Bombay High Court is of opinion that in such a case the High Court has power either to convict or acquit the accused according as the evidence is or is not sufficient for conviction. Where the facts have to be determined and the evidence is of such a character as to render it difficult to pronounce any opinion without hearing the witness, a new trial may be ordered.<sup>3</sup> The Madras<sup>4</sup> and the Nagpur<sup>5</sup> High Courts have held similarly.

**Compensation.**—An appellate Court has no power to order compensation under s. 250.<sup>6</sup>

**424.** The rules contained in Chapter XXVI as to the judgment of a  
Judgments of Criminal Court of original jurisdiction shall apply, so  
subordinate Appel- far as may be practicable, to the judgment of any  
late Courts. Appellate Court other than a High Court :

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

**COMMENT.**—This section makes the provisions of s. 367 applicable to the judgments of Courts of appeal, except when the appeal has been summarily rejected under s. 421, *supra*. The High Court is not required, after pronouncing a judgment in open Court, to date and sign the same.<sup>7</sup>

**Judgment in appeal.**—The judgment of an appellate Court should set out the cases for the prosecution and the defence, the point or points for determination, the decision thereon and the reasons for the decision.<sup>8</sup>

An appellate Court, without going to the length of writing an elaborate judgment, should, in deciding a criminal appeal, notice briefly but clearly the objections urged on appeal, and how they were disposed of.<sup>9</sup>

Omission to write the judgment is not an irregularity cured by s. 537 (a) of the Code.<sup>10</sup>

**425. (1)** Whenever a case is decided on appeal by the High  
Order by High Court on appeal to be certified to lower Court. Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or

<sup>1</sup> *Binayendra Chandra Pande*, (1930) 63 Cal. 920, 954; *Taju Pramanik*, (1898) 25 Cal. 711; *Government of Bengal v. Sunitram Mandal*, (1930) 58 Cal. 96; contra, *Wafadar Khan*, (1894) 21 Cal. 955; *Ali Fikir*, (1897) 25 Cal. 230.

<sup>2</sup> *Ikram-ud-din*, (1917) 30 All. 348, following *Wafadar's* case, *supra*.

<sup>3</sup> *Ramchandra Shankarashet*, (1932) 35 Bom. L. R. 174; *Ramchandra Govind Harshe*, (1895) 19 Bom. 749.

<sup>4</sup> *Smither*, (1902) 26 Mad. 1.

<sup>5</sup> *Harackchand*, [1942] Nag. 510.

<sup>6</sup> *Mehi Singh v. Mangal Khandu*, (1911) 39 Cal. 157, F.B.

<sup>7</sup> *Pragmadho Singh*, (1932) 55 All. 182.

<sup>8</sup> *Abdul Gani Bandukchi*, [1948] 1 Cal. 432; *Bansidhar*, [1939] All. 805.

<sup>9</sup> *Eknori Mukerjee*, (1904) 32 Cal. 178; *Rash Behari Das v. Balgopal Singh*, (1893) 21 Cal. 92.

<sup>10</sup> *Devendra Shivappa*, (1915) 17 Bom. L. R. 1085.

passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court ; and, if necessary, the record shall be amended in accordance therewith.

**426.** (1) Pending any appeal by a convicted person,<sup>1</sup> the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(2A) When any person other than a person accused of a non-bailable offence is sentenced to imprisonment by a Court, and an appeal lies from that sentence, the Court may, if the convicted person satisfies the Court that he intends to present an appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the Appellate Court under sub-section (1) and the sentence of imprisonment shall, so long as he is released on bail, be deemed to be suspended.

(3) When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

**COMMENT.**—The appellate Court can alone exercise the powers conferred by this section. But in the absence of an appeal the powers cannot be exercised, because the section says " pending any appeal by a convicted person " the execution of sentence may be suspended.

1. ' Convicted person.'—This expression includes a person against whom an order under s. 107 of the Code is passed.<sup>1</sup>

**Sub-section (2A).**—This sub-section has been added by Act II of 1945, s. 3, in view of the decision of the Privy Council in *Jairam Das v. Empress*<sup>2</sup> that the Code of Criminal Procedure confers no power on a High Court to grant bail in the case of a convicted person, and the fact that he has obtained leave from His Majesty in Council to appeal from his conviction or sentence makes no difference in this regard. Such a power must be statutory and does not reside in the inherent powers of the High Court. The Privy Council in their judgment suggested legislation on the subject, and consequently this sub-section has been added.

**427.** When an appeal is presented under [section 411A, sub-section (2), or]\* section 417, the Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

<sup>1</sup> *Kakkaru Rai*, (1932) 54 All. 861. <sup>2</sup> (1945) 47 Bom. L. R. 634, P. C.

The words within brackets were added by Act XXVI of 1943, s. 5.

**428. (1)** In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons, and may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry.

**COMMENT.**—This section contemplates a further inquiry by taking additional evidence, when the conviction by the lower Court has been based upon some evidence which might legally support it, but which in the opinion of the appellate Court is not quite satisfactory.

**Object.**—The intention of the Legislature in enacting this section is to empower the appellate Court to see that justice is done between the prosecutor and the person prosecuted, and if the appellate Court finds that certain evidence is necessary in order to enable it to give a correct finding, it would be justified in taking action under this section.<sup>1</sup> The section is not intended to remedy the negligence or laches of the prosecution.<sup>2</sup>

Such additional evidence is taken in the manner prescribed by s. 356.

**Effect of additional evidence.**—The appellate Court cannot consider and determine a new case disclosed by the additional evidence, except in so far as to affirm or modify or set aside the sentence under appeal or to act as otherwise provided by s. 428 (1) (b).<sup>3</sup>

If additional evidence is taken it does not entitle a party to appeal from a judgment upon such evidence to the High Court upon the merits, treating it in substance as an original judgment.<sup>4</sup>

**429.** When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

**COMMENT.**—The Bombay High Court has held that this section overrules cl. 36 of the Letters Patent which provides that the opinion of the senior Judge shall prevail.<sup>5</sup> The Calcutta High Court has held that it does not apply to proceedings under s. 145 which is outside s. 485. On a difference of opinion, on revision of such a proceeding, the opinion of the senior Judge prevails under cl. 36 of the Letters Patent.<sup>6</sup>

<sup>1</sup> *Dulla*, (1926) 7 Lah. 148; *Luchmun Singh*, (1904) 31 Cal. 710.

<sup>2</sup> *Jeremiah v. Vas*, (1911) 36 Mad. 457, 467.

<sup>3</sup> *Isahak*, (1900) 27 Cal. 372.

<sup>4</sup> *Nantamram Utamram*, (1889) 6 B. H. C. R. (Cr. C.) 64.

<sup>5</sup> *Dada Ana*, (1889) 15 Bom. 452.

<sup>6</sup> *Mariam Bawa v. Merjan Sardar*, (1919) 47 Cal. 488.

Where the Judges composing the Court of appeal are equally divided in opinion, the case of the accused is, under this section, laid before a third Judge whose duty it is to consider the whole case and all the points involved, and it will be according to the opinion of such Judge that the judgment will follow.<sup>1</sup> Where there is disagreement among two Judges and the case is to be referred to a third Judge it is only the case of the particular prisoner as to whom there is a difference of opinion which need be referred and not the whole case.<sup>2</sup>

**430.** Judgments and orders passed by an Appellate Court upon Finality of orders appeal shall be final, except in the cases provided for on appeal. in section 417 and Chapter XXXII.

**COMMENT.**—The section applies to all orders of an appellate Court upon the appeal. It is not necessary that the order should have been passed on the merits. Where an appeal has been dismissed as not having been prosecuted within the time fixed by the law of limitation, it is not competent for the appellate Court to reconsider its order and hear the appeal.<sup>3</sup>

**Revision.**—This section does not apply to judgments in revision applications, but the principle of finality of judgments laid down therein applies also to such judgments.<sup>4</sup>

The orders of an appellate Court are open to revision. See Chapter XXXII.

**431.** Every appeal under [section 411A, sub-section (2), or]\* section 417, shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

**COMMENT.**—Every appeal, except an appeal against a sentence of fine, abates on the death of the appellant, because the sentence under appeal can no longer be executed.

The principle of this section applies to matters in revision. A revisional application against a sentence of fine will not abate by reason of the death of the applicant.<sup>5</sup>

**Case.**—Two persons, M and N, were convicted of criminal breach of trust, and each was sentenced to one year's rigorous imprisonment and a fine of Rs. 1,000. Both the prisoners filed an appeal to the High Court. N died pending his appeal. On M's appeal, the High Court passed an order acquitting him, and reversing his conviction and sentence. Thereupon one of the relatives of the deceased N applied to the High Court to set aside the conviction and sentence passed in his case, and order the fine to be refunded. It was held that on N's death his appeal abated.<sup>6</sup>

## CHAPTER XXXII.

### OF REFERENCE AND REVISION.

This Chapter deals with two important jurisdictions which are special to the High Court, viz., (1) reference and (2) revision. The former jurisdiction can be

<sup>1</sup> *Sarat Chandra Mitra*, (1910) 38 R. 954.

Cal. 202.

<sup>2</sup> *Sita Ram v. Ram Dayal*, (1937)

<sup>3</sup> *Chunna Singh*, [1943] All. 82. <sup>4</sup> 13 Luck. 306.

<sup>5</sup> *Bhimappa*, (1894) 19 Bom. 782. <sup>6</sup> *Nabishah*, (1894) 19 Bom. 714.

<sup>7</sup> *Inderchand*, (1934) 36 Bom. L.

\* The words within brackets were added by Act XXVI of 1948, s. 5.

invoked either by (a) a Presidency Magistrate (s. 432), (b) by a Judge of the High Court in the exercise of original criminal jurisdiction (s. 434). In both cases, the reference can be made only on a question of law, and must arise in the hearing of a case. The revisional jurisdiction is more elaborate. It can be exercised by the High Court, Sessions Judge, District Magistrate or Sub-divisional Magistrate specially empowered (s. 435). The record of the case is called for with a view either to order further inquiry (s. 436) or commitment (s. 437), or where action is taken by the Sessions Judge or the District Magistrate, he may report the case to the High Court (s. 438). Where the High Court exercises the jurisdiction either of itself or on a report made under s. 438 it can exercise any of the powers which are conferred on an appellate Court (s. 439). The jurisdiction above referred to is described as the revisional jurisdiction of the High Court. There are two other sources of jurisdiction which the High Court has over criminal Courts "subject to its appellate jurisdiction." One is derived from cls. 26, 27 and 28 of the amended Letters Patent, 1865. The second is known as the powers of superintendence which arises under s. 224 of the Government of India Act, 1935 (26 Geo. V, c. 2).

**432.** A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

**COMMENT.**— Three things are required under the section. First, it is only a Presidency Magistrate who can act under the section and no one else. Secondly, the reference can be made only on a question of law and not on a question of fact.<sup>1</sup> Thirdly, the question referred must arise "in the hearing of a case."<sup>2</sup>

**433. (1)** When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

**Direction as to costs.** (2) The High Court may direct by whom the costs of such reference shall be paid.

**434.** [Omitted by Act XXVI of 1943, s. 6.]

**435. (1)** The High Court or any Sessions Judge or District Magistrate, or any Sub-divisional Magistrate empowered by the Provincial Government in this behalf, may call for and examine the record of any proceeding<sup>1</sup> before any inferior Criminal Court<sup>2</sup> situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confine-

<sup>1</sup> *Molla Fuzla Karim*, (1905) 33 Cal. 193.

<sup>2</sup> *Nanu*, (1899) 1 Bom. L. R. 521.

ment, that he be released on bail or on his own bond pending the examination of the record.

*Explanation.*—All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 487.

(2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(3) [Omitted by s. 116 of Act XVIII of 1923].

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

**COMMENT.**—Sections 485 to 489 deal with what is known as the revisional jurisdiction of the High Court. The revisional jurisdiction is derived from three sources: (1) sections 435 to 439 of the Criminal Procedure Code; (2) section 224, sub-s. (2), of the Government of India Act, 1935 (20 Geo. V., c. 2)<sup>1</sup> and cl. 28 of the Letters Patent; and (3) the power to issue the writ of certiorari.<sup>2</sup> It will be noticed that the operative section is s. 439.

The power to call for records of inferior criminal Courts is conferred on four kinds of Courts: (1) High Court; (2) Sessions Judge; (3) District Magistrate; and (4) Sub-divisional Magistrate specially empowered. The grounds on which the power can be exercised are two: (a) where the finding, sentence or order is illegal or improper;<sup>3</sup> and (b) where the proceedings are irregular. The only action that a Sub-divisional Magistrate can take is to forward the record of the case with his own remarks to the District Magistrate (s. 435). Where the High Court or the Sessions Judge has called for the record, it is open to either of them to ask the District Magistrate to make further inquiry into the case (s. 436). Where the record has been called for by the Sessions Judge or District Magistrate, either of them can order the accused to be committed for trial, where it appears that the case is exclusively triable by a Court of Session and that the accused is improperly discharged (s. 437). It is also open to either of them to report the case to the High Court for reversal or alteration of the sentence (s. 438). The High Court, in dealing with a case which has either been called for by itself or which has been reported to it for orders or which has otherwise come to its knowledge may exercise any of the powers conferred on an appellate Court and may enhance the sentence (s. 439).

1. 'Proceeding.'—This word would include a pending case. The High Court possesses the power to interfere at any stage of the case, and when it is brought to its notice that a person has been subjected to harassment of an illegal prosecution, it is its bounden duty to interfere.<sup>4</sup> The High Court will exercise its power where there is a material error or defect in law or procedure, misconception or misreading of evidence, failure to exercise or wrong exercise of jurisdiction, or where the facts admitted or proved do not disclose any offence.<sup>5</sup> Cases for such interference "must be of an exceptional nature.... one safe practical test would be this, namely, that a bare statement of the facts of the case without any elaborate argument should be

<sup>1</sup> See *Charoobala Dabee v. Barendra Nath Moosundar*, (1899) 27 Cal. 126, decided under the Government of India Act, 1915 (5 & 6 Geo. V., c. 61).

<sup>2</sup> *Besant*, (1916) 30 Mad. 1164.

<sup>3</sup> *Nobin Kristo Mookerjee v. Russick*

*Lal Laha*, (1884) 10 Cal. 268.

<sup>4</sup> *Chandi Pershad v. Abdur Rahman*, (1894) 22 Cal. 181.

<sup>5</sup> *Harbhajan Singh*, [1942] Nag. 494.

sufficient to convince this Court that it is a fit one for its interference at an intermediate stage."<sup>1</sup> When, therefore, the facts float on the surface and there is not even a scintilla of suspicion of criminal liability as against the accused the High Court would interfere and quash the proceedings because to allow the proceedings to continue would be allowing a farce to be enacted to the great harassment of the accused.<sup>2</sup>

**Explanation.**—A District Magistrate for the purposes of this section is deemed to be inferior to the Sessions Judge.<sup>3</sup>

2. 'Inferior Criminal Court.'—The jurisdiction can be exercised only over an inferior criminal Court. It does not include a civil or revenue Court acting under s. 476 of the Code.<sup>4</sup>

**Sub-section (4).**—The word "made" means made, entertained, and decided. If an application is made to a District Magistrate and he is of opinion that it should be made to the Sessions Judge, a fresh application to the Sessions Judge is competent.<sup>5</sup>

**Concurrent jurisdiction.**—The High Court does not ordinarily entertain an application for revision in cases where the Sessions Judge or the District Magistrate has concurrent revisional jurisdiction with the High Court save on some special ground shown, unless a previous application has been made to the lower Court; but where concurrent jurisdiction is not possessed by the lower Courts no such general rule exists.<sup>6</sup> According to a practice of the High Court an application in revision to the Sessions Judge or to the District Magistrate is an essential step in the procedure of filing a criminal revision in the High Court, and failure on the part of the applicant in this respect operates as a bar to the application being entertained by the High Court. The fact that there has been an appeal to a Magistrate, first class, or even to the District Magistrate is not a compliance in principle with this rule. Inasmuch as a revision should and generally does cover different grounds from an appeal, an appeal to the District Magistrate does not serve the object underlying the rule in the same way as a revision would.<sup>7</sup> But if a Judge of a High Court, on some special ground stated in the petition, decides to intervene, he cannot be said to be acting illegally, although it may be contrary to the practice.<sup>8</sup>

436. On examining any record under section 485 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any Subordinate

<sup>1</sup> *Choa Lal Dass v. Anant Pershad Misor*, (1897) 25 Cal. 233; *Jagat Chandra Mosumdar*, (1899) 26 Cal. 786; *Nageshappa*, (1895) 20 Bom. 543; *Shripad Chandavarkar*, (1927) 52 Bom. 151, 30 Bom. L. R. 70; *Kuppuswami Aiyar*, (1915) 39 Mad. 561; *Ramanathan Chritiyar v. Subrahmanya Ayyar*, (1924) 47 Mad. 722.

<sup>2</sup> *Hakim Abdul Wali*, (1933) 9 Luck. 61.

<sup>3</sup> *Haji Abdus Subhan v. Gajanan*, [1943] Nag. 637.

<sup>4</sup> *Har Prasad Das*, (1913) 40 Cal. 477, F.B.; *Ruktu Singh*, (1921) 6 P. L. J. 178; *Udit Narain Dube*, (1912) 35 All. 109.

<sup>5</sup> *Appachi Goundan*, (1931) 54 Mad.

842.

<sup>6</sup> *Reolah*, (1887) 14 Cal. 887; *Abdus Sobhan*, (1909) 36 Cal. 648; *Ranah Behari Saha v. Phani Bhushan Haldar*, (1920) 48 Cal. 534; *Abdul Mallab v. Nanda Lal Khatri*, (1922) 50 Cal. 423; *Gulloy v. Bakar Husain*, (1905) 28 All. 268; *Shafa-ud-ullah v. Wali Ahmad Khan*, (1907) 30 All. 116; *Mansur Husain*, (1919) 41 All. 587; *Sharif Ahmad v. Zabul Singh*, (1921) 43 All. 497; *Bhure Mal*, (1923) 45 All. 526; *Chagan Dayaram*, (1890) 14 Bom. 331.

<sup>7</sup> *Muhammad Hashim*, (1932) 55 All. 201.

<sup>8</sup> *Bisheshwar Prasad Sinha*, (1933) 56 All. 158.

Magistrate to make, further inquiry<sup>1</sup> into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any person accused of an offence<sup>2</sup> who has been discharged :<sup>3</sup>

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of shewing cause why such direction should not be made.

COMMENT.—This section deals with power to direct "further inquiry". Such power is also given by ss. 375, 423 (1), 437 [prov. (b)], and 532 (3).

This section does not enable the High Court to deal with cases decided by the Presidency Magistrates: it can do so under ss. 435 and 439 or cl. 28 of the Letters Patent.<sup>4</sup>

As regards dismissal of complaints under ss. 203 and 204 (3) and orders of discharge, there is no appeal as there is in cases of acquittal and conviction, and the Legislature has not thought it sufficient to leave these orders to be dealt with under the general revisional jurisdiction (viz., ss. 435, 438 and 439), but has conferred special powers in regard to these orders on the High Court itself as well as on the Sessions Judge and District Magistrate. The effect of the order for further inquiry is of course to set aside the dismissal of the complaint and the order of discharge. But the Sessions Judge or District Magistrate cannot, in the exercise of the power to order further inquiry, himself frame the charge or order the Magistrate to frame the charge or try the accused. But in the gravest class of offences the Sessions Judge and District Magistrate are empowered (s. 437) to dispense with further inquiry and commit for trial forthwith, thus avoiding the stage of further proceedings before the subordinate Magistrate which the Legislature considers unnecessary in view of the weight attached to the opinion arrived at by the Sessions Judge or District Magistrate.<sup>5</sup>

It will be noticed that the High Court or the Sessions Judge can act under the section; and further inquiry must be made either by the District Magistrate or any Magistrate subordinate to him. The District Magistrate may also act under the section and make further inquiry. Thus, the three Courts have concurrent jurisdiction. But, in practice, the aggrieved party should first move the District Magistrate or the Sessions Judge as the case may be. But where, however, the District Magistrate has once acted under the section, it is not open to the Sessions Judge who has no jurisdiction to review the order; but he may refer the matter to the High Court.<sup>6</sup> Similarly, where the Sessions Judge has passed orders, it is not open to the District Magistrate to pass orders of a contrary kind, but he may submit the matter to the High Court through the medium of the Public Prosecutor.<sup>7</sup> The District Magistrate has no jurisdiction under this section to order a re-trial of a case; he can order further inquiry.<sup>8</sup>

The High Court, the Court of Session, and the District Magistrate all have power, as Courts of revision, to deal with an order of discharge, and to deal with it on merits as well as on other grounds. They have the power to interfere on the ground that the order is incorrect, that is, wrong on the merits, no less than on the

<sup>1</sup> *Cobille v. Kristo Kishore Bose*, (1899) 26 Cal. 364; *Malik Pratap Singh v. Khan Mahomed*, (1909) 36 Cal. 994; *Varjivandas*, (1902) 27 Bom. 84, 4 Bom. L. R. 770.

<sup>2</sup> *Narayanawamy Naidu*, (1909) 32

Mad. 220, 233, 234, F.S.

<sup>3</sup> *Darbari Mendar v. Jagoo Lall*, (1885) 22 Cal. 573.

<sup>4</sup> *Pirih*, (1889) 12 All. 424.

<sup>5</sup> *Muhammad Husain v. Nanki*, (1929) 52 All. 257.



ground of illegality or irregularity. The High Court or the Court of Session or the District Magistrate has jurisdiction on any sufficient ground to set aside an order of discharge, and direct either an additional investigation of the facts, or a re-consideration of the evidence, by the Magistrate whose order is set aside, or a new inquiry before another Magistrate; and among such sufficient grounds are the omission to take evidence which ought to have been taken, the discovery of fresh evidence, mistakes of law, illegality or irregularity in the proceedings, and the incorrectness of the first finding. However, the discretion thus conferred is a judicial discretion. No Court can properly set aside an order of discharge without having and assigning solid and sufficient reasons for doing so. In a case triable only by the Sessions Court, to which s. 487 applies, if the Sessions Judge or the District Magistrate is satisfied that on the evidence taken there is a clear case for a committal, and there is no reason for desiring a further consideration by a Magistrate, it would ordinarily be his duty to direct a committal under s. 487, and not to make further enquiry under s. 486. In the same way, in a case not triable only by the Court of Session, if the Sessions Judge or the District Magistrate is satisfied that on the evidence taken there is a clear case for charging and trying the accused, and there is no reason for desiring further magisterial examination, it is ordinarily his duty to refer the case to the High Court, which can make a suitable order, and not to direct further inquiry by a Magistrate.<sup>1</sup> The Sessions Judge has power to direct the Magistrate to hold a further inquiry but he has no jurisdiction to frame a charge himself.<sup>2</sup>

1. 'Further inquiry.'—The term "inquiry" is *not* in its ordinary acceptation restricted to the mere taking of evidence, but it includes also a consideration of its effect in relation to the complaint forming the subject of the inquiry. This being so, it is not clear why the expression "further inquiry" should not signify as well a fresh consideration of the effect of the evidence already recorded as a supplemental inquiry upon fresh evidence,<sup>3</sup> and the conclusion to charge or discharge the accused.<sup>4</sup> In directing "further inquiry" it should be left entirely to the inquiring Magistrate to determine whether or not the evidence justified the accused being charged and put on his trial,<sup>5</sup> or committed to the Court of Session.<sup>6</sup>

2. 'Person accused of an offence.'—This expression makes it clear that discharge refers to a person who has been accused of an offence. It does not include a person proceeded against under s. 109,<sup>7</sup> s. 110<sup>8</sup> or s. 183,<sup>9</sup> or s. 145.<sup>10</sup>

3. 'Discharged.'—This section applies where the accused has been "discharged," i.e., "discharged within the meaning of ss. 209, 253 and 259 of the Code."<sup>11</sup> The section cannot be employed where the accused has been discharged under s. 192<sup>12</sup>

<sup>1</sup> *Hari Dass Sanyal v. Saritulla*, (1898) 15 Cal. 608, 619, 620, F.B., dis-sented from in *Narayanawamy Naidu*, (1909) 32 Mad. 220, F.B.

<sup>2</sup> *Ibrahim v. Guran Ditta Mal*, (1882) 13 Lah. 599.

<sup>3</sup> Per Muttusami Ayyar, J., in *Balasubramaniam*, (1891) 14 Mad. 384, F.B.; *Venkata Subba Reddi v. Ayyalu Reddi*, (1908) 32 Mad. 214; *Hari Dass Sanyal v. Saritulla*, sup.; *Chotu*, (1896) 2 All. 52, F.B.; *Dorabji Hormasji*, (1885) 10 Bom. 181; *Dhanidev v. F. L. Chifford*, (1888) 13 Bom. 376.

<sup>4</sup> *Hari Dass Sanyal v. Saritulla*, sup., p. 620.

<sup>5</sup> *Gajankhan*, (1900) 2 Bom. L. R.

586.

<sup>6</sup> *Munisami*, (1891) 15 Mad. 39.

<sup>7</sup> *Neur Ahir*, (1928) 51 All. 408.

<sup>8</sup> *Imam Mondal*, (1900) 27 Cal. 662; *Dayanath Taluqdar*, (1905) 33 Cal. 8; *Velu Tayi Ammal v. Chidambaram Pillai*, (1909) 33 Mad. 85; *Roshan Singh*, (1928) 46 All. 285; *Maung Than*, (1928) 2 Ran. 80.

<sup>9</sup> *Srinath Roy v. Ainaddi Halder*, (1897) 24 Cal. 395; *Indra Nath Banerjee*, (1897) 25 Cal. 425.

<sup>10</sup> *Chathu Rai v. Niranjan Rai*, (1898) 20 Cal. 729.

<sup>11</sup> *Velu Tayi Ammal v. Chidambaram Pillai*, (1909) 33 Mad. 85, 86.

<sup>12</sup> *Ibid.*; *Roshan Singh*, sup.

or "acquitted."<sup>1</sup>

**Proviso.**—The proviso is imperative and enjoins that an opportunity should be given to the accused to show cause why further inquiry should not be ordered. A disregard of the proviso is an illegality, and, in any case, such an irregularity as seriously prejudices an accused person who is ordered to be proceeded against.<sup>2</sup>

**Notice.**—Where a complaint has been dismissed under s. 203<sup>3</sup> or s. 204<sup>4</sup> no notice need be given to an accused before a further inquiry is ordered under this section, according to the High Courts of Bombay and Allahabad; but the Calcutta<sup>5</sup> and the Lahore<sup>6</sup> High Courts have held that such notice should be given.

**437.** • When, on examining the record of any case under section 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session and that an accused person has been improperly discharged<sup>1</sup> by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry,<sup>2</sup> order him to be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge or District Magistrate, improperly discharged :

Provided as follows :—

(a) that the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made ;

(b) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to inquire into such offence.

**COMMENT.**—This section is an amplification of the foregoing section. It applies only when (1) the offence is triable exclusively by a Court of Session,<sup>7</sup> and (2) the accused has been improperly charged. Either the Sessions Judge or the District Magistrate can act under the section. He may instead of ordering fresh inquiry commit the accused straightway to the Court of Session. But there are two conditions precedent to the exercise of the power. They are : (1) notice should be given to the accused ; and (2) where a different offence is made out an inquiry should be made into it by the inferior Court.

Sessions Judges and Magistrates should, in a case where a man has been discharged, use the powers given to them by this section sparingly and with great caution and circumspection, specially in cases where the questions involved are mere matters of fact.<sup>8</sup>

1. 'Discharged.'—It is the order of discharge which furnishes foundation of jurisdiction to act under this section. Where a charge is not pressed by the prosecution and the Magistrate does not frame it, the charge cannot be revived and commitment on it ordered under this section ;<sup>9</sup> nor can a charge still under inquiry

<sup>1</sup> *Erramreddi*, (1885) 8 Mad. 296 ;  
*Sriamulu v. Veerasalingam*, (1914) 38  
Mad. 585 ; *Baijanath Pandey v. Gauri*  
*Kanta Mandal*, (1893) 20 Cal. 633.

<sup>2</sup> *Bhagwan Das*, (1933) 56 All. 285.

<sup>3</sup> *Dhondu Bapu*, (1927) 29 Bom.  
12 R. 713.

<sup>4</sup> *Gajraj Singh*, (1925) 47 All. 732 ;  
*Liaqat Hussain*, (1917) 40 All. 188 ;  
*Angan v. Ram Pirbhan*, (1912) 35 All.  
78.

<sup>5</sup> *Ambar Ali v. Anjab Ali*, (1911)

39 Cal. 238 ; *Wahed Ali Sheikh*, (1905)  
32 Cal. 1090.

<sup>6</sup> *Nabi Bakhsh*, (1919) 1 Lah. 216.

<sup>7</sup> *Chenchiah*, (1919) 42 Mad. 561 ;  
*Baijanath Pandey v. Gauri Kanta Man-*  
*dal*, sup. ; *Gendiel*, (1918) 16 Bom. L. R.  
80.

<sup>8</sup> *Chotu*, (1886) 9 All. 52, F.B. ;  
*Alam*, (1927) 49 All. 879, 882.

<sup>9</sup> *Murappa Goundam*, (1918) 41 Mad.  
932.

before inferior Magistrate be treated as an order of discharge.<sup>1</sup>

2. 'Fresh inquiry.'—These words have the same meaning as the words "further inquiry" in s. 436.<sup>2</sup>

Proviso (a).—The issue of notice to the accused is an indispensable preliminary; want of notice vitiates the proceedings.<sup>3</sup>

High Court.—This section does not in terms apply to the High Court, which can act under ss. 423 and 439 and direct a commitment.<sup>4</sup> An order passed under this section is liable to be revised by the High Court,<sup>5</sup> apart from the limitations of s. 215. The High Court can consider the facts as well as the questions of law involved.<sup>6</sup>

438. (1) The Sessions Judge or District Magistrate may, if he thinks fit, on examining under section 435 or otherwise<sup>1</sup> the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

COMMENT.—Sections 436 and 437 refer to a discharged accused. Under the former section, a further inquiry may be ordered: under the latter, the accused may straightway be committed to the Court of Session. This section deals with a convicted accused. If the sentence passed upon him requires to be "reversed" or "altered," the Sessions Judge or District Magistrate may refer his case to the High Court. But he is not at liberty to order further inquiry in such a case.<sup>7</sup>

1. 'Or otherwise.'—The power given to a District Magistrate to make a reference to the High Court clearly refers to a "proceeding before any inferior criminal Court." The phrase "or otherwise" does not give the Magistrate the power to question the propriety of a judgment or sentence by a superior criminal authority.<sup>8</sup> A District Magistrate is not, therefore, empowered to make a reference to the High Court questioning the propriety of a judgment by a Sessions Judge,<sup>9</sup> but he can ask the Public Prosecutor to move the High Court.<sup>10</sup> A Sessions Judge, however, can act under the section if not satisfied with the order of a District Magistrate.<sup>11</sup>

<sup>1</sup> *Gandhi Appa Rasu*, (1919) 43 Mad. 330.

<sup>2</sup> *Hari Dass Sanyal v. Saritulla*, (1888) 15 Cal. 608, 619, F.B.

<sup>3</sup> *Kanjmalai*, (1883) 6 Mad. 372.

<sup>4</sup> *Ponnuswami Nayak*, (1927) 52 Mad. 156; *Varjivandas*, (1902) 27 Bom. 85, 4 Bom. L. R. 779; *Ram Lal Singh*, (1888) 6 All. 40.

<sup>5</sup> *Kalagava Bapiah*, (1908) 27 Mad. 54.

<sup>6</sup> *Muthiah Chetty*, (1906) 30 Mad. 224.

<sup>7</sup> *Valav*, (1888) Unrep. Cr. C. 407.

<sup>8</sup> *Karamadi*, (1895) 23 Cal. 250; *Jamna Bai*, (1905) 28 All. 91; *Wasawi*, (1923) 5 Lah. 11.

<sup>9</sup> *Lobo*, (1916) 41 Bom. 47, 18 Bom. L. R. 796; *Krishnaji*, (1904) 6 Bom. L. R. 1099; *Ganga*, (1914) 36 All. 378.

<sup>10</sup> *Jahandi*, (1895) 23 Cal. 249; *Shere Singh*, (1887) 9 All. 362.

<sup>11</sup> *Darbari Mander v. Jago Lal*, (1895) 22 Cal. 573.

Where a Sessions Judge once declines to make a reference to the High Court he is not thereby debarred from making another reference in the same case in view of the facts that come subsequently to his knowledge.<sup>1</sup>

This section does not authorise the Sessions Judge or Magistrate to refer his own order with a recommendation that it be altered.<sup>2</sup>

**Acquittal order.**—The Calcutta, the Madras, and the Lahore High Courts have held that this section does not permit a reference by the District Magistrate the object of which is to have an order of acquittal passed by an inferior Court set aside.<sup>3</sup> The Allahabad High Court has held that in a case of acquittal the powers of the District Magistrate under this section are not shut out by sub-s. (5) of s. 489 because the Provincial Government could have appealed and has not done so.<sup>4</sup> The Patna High Court is also of the opinion that such a reference is competent to a Sessions Judge.<sup>5</sup>

**439. (1)** In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 388, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

(4) Nothing in this section applies to an entry made under section 278, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.

**COMMENT.**—The jurisdiction exercised by the High Court under this section is called revisional jurisdiction. It is very wide indeed. The Court may interfere

<sup>1</sup> *Sitaram*, (1927) 29 Bom. L. R. 480.

<sup>2</sup> *Ramasis Thakar*, (1933) 13 Pat. 150.

<sup>3</sup> *Hrishikesh Mandal v. Abadhaut Mandal*, (1916) 44 Cal. 708; *Sinnu Goundam*, (1914) 38 Mad. 1028; *Ach-*

*har Singh*, (1923) 5 Lah. 16.

<sup>4</sup> *Bashir*, (1930) 53 All. 42, not following *Sheikh Amin-ud-din*, (1902) 24 All. 346. See also *Madar Baksh*, (1902) 25 All. 128.

<sup>5</sup> *Wazir Kunjra*, (1923) 7 Pat. 579.

to test the correctness, legality or even the propriety of any finding, sentence or order. It may also interfere to examine the regularity of any proceedings. It can exercise all the powers of an appellate Court; but it may go further and enhance the sentence. The limits placed on the revisional powers are (1) that the sentence cannot be enhanced beyond the powers of a Presidency Magistrate or a Magistrate of the first class; and (2) that finding of acquittal cannot be converted into a finding of conviction. This jurisdiction can be invoked in any one of the three ways: (a) the High Court can act on its own initiative; (b) the case may be reported to the High Court under s. 438, and (c) the person aggrieved can make application.

**Sub-section (4).—**The High Court cannot convert a finding of acquittal into one of conviction.<sup>1</sup> But where there is no appeal either by the Crown or the accused, but only a revision petition by a private complainant, the powers of the High Court under this section are exactly the same as the powers of a Court of appeal conferred by s. 423, 426, 427, 428 or s. 338. Under s. 423 the High Court can order the accused to be re-tried by a Court of competent jurisdiction.<sup>2</sup> It is, however, open to the High Court to set aside an order of acquittal and direct a re-trial if there is a case of non-recording of evidence or improper recording of inadmissible evidence.<sup>3</sup> If the High Court has set aside an order of acquittal but declined to direct a new trial, it is still open to the authorities to prosecute the accused for the same offence in a proper case.<sup>4</sup>

**Sub-section (5).—**The High Court does not interfere in the exercise of its powers unless all other remedies provided by law have been exhausted.<sup>5</sup> When a party who could have appealed has not appealed, the High Court will not entertain his application in revision.<sup>6</sup> In a case of acquittal, the powers of the District Magistrate<sup>7</sup> or Sessions Judge<sup>8</sup> to take action under s. 438 are not shut out by this sub-section because the Provincial Government could have appealed and has not done so.<sup>9</sup>

**Sub-section (6).—Enhancement of sentence.**—The sentence can be enhanced by the High Court alone and only in its revisional jurisdiction. The Bombay High Court has held that where a reference is made to the High Court to enhance the sentence passed by the Magistrate and the High Court has issued notice to the accused it is competent to the accused on showing cause against the notice of enhancement to challenge his conviction as well.<sup>10</sup> The Bombay High Court has also held that where an appeal by an accused against his conviction has been dismissed by the High Court, and subsequently proceedings are taken for enhancement of the sentence, the accused in showing cause against such enhancement cannot be heard to show cause against his conviction as this would offend the principle of finality of judgment as embodied in s. 369.<sup>11</sup> It is neither necessary nor desirable for the

<sup>1</sup> *Kishan Singh*, (1928) 55 I. A. 390, 30 Bom. L. R. 1572, 50 All. 722, overruling *Bali Reddi*, (1913) 37 Mad. 119; *Rameshwar*, (1929) 81 Bom. L. R. 520, 58 Bom. 514.

<sup>2</sup> *Pratap Singh v. Harnam Singh*, [1942] Lah. 125.

<sup>3</sup> *Ma Nyein v. Maung Chit Hpu*, (1929) 7 Ran. 538.

<sup>4</sup> *Yemanya*, (1936) 39 Bom. L. R. 476.

<sup>5</sup> *Ala Bakhsh*, (1884) 6 All. 484.

<sup>6</sup> *Dayal Singh*, (1936) 17 Lah. 604;  
*Jamnadas Naikji*, (1936) 39 Bom. L. R. 82, [1937] Bom. 263; *Ali Hossain*,

[1941] 1 Cal. 417.

<sup>7</sup> *Bashir*, (1930) 53 All. 42.

<sup>8</sup> *Ram Khelawan v. Sheo Nandan*, (1931) 54 All. 413.

<sup>9</sup> *Bashir*, sup.

<sup>10</sup> *Manant Mehta*, (1925) 49 Bom. 392, 27 Bom. L. R., 1843. See *Ahmad*, (1934) 36 Bom. L. R. 1126.

<sup>11</sup> *Jorabhai Kisanbhai*, (1926) 28 Bom. L. R. 1051, 50 Bom. 783, holding that the observations to the contrary in *Emperor v. Mangal*, (1924) 27 Bom. L. R. 355, 49 Bom. 450, 452, were obiter; *Nga Ba Saing*, [1940] Ran. 145.

High Court to issue a notice for enhancement of sentence at the time of the admission of an appeal. It is, however, open to consider the question of enhancement of sentence after the appeal has been heard.<sup>1</sup> Subsequently the Bombay High Court has held that where a petition for revision by the accused against his conviction and sentence has been dismissed and notice to enhance his sentence has been subsequently issued on an application by the Crown, the accused cannot, at the hearing of the application for enhancement of the sentence, be re-heard on the merits of his conviction. This sub-section operates as an exception to sub-s. (5) and not to any other section of the Code, and does not give an accused a right to be heard against his conviction if such a right is in conflict with other provisions of the Code.<sup>2</sup>

A full bench of the Lahore High Court, differing from the Bombay High Court, has held that where a convicted person is called upon to show cause why his sentence should not be enhanced he is entitled to show cause against his conviction notwithstanding the fact that his petition for revision of the order by which he was convicted has already been dismissed *in limine* under s. 435. The true interpretation of this clause is that it gives an unlimited right to the accused to whom a notice of enhancement is issued under cl. (2) to show cause against his conviction and the Judge is bound to go into the evidence with a view to find *himself* whether the conviction can be sustained. This right accrues to the convict on service of notice of enhancement of sentence and cannot be negated by anything that has preceded the issue of that notice. It is the Judge hearing the enhancement petition who has to give an opportunity to the convict to challenge his conviction before him and to satisfy him that the conviction is unsustainable. That Judge cannot substitute for his satisfaction the satisfaction of some other Judge in the matter. It is a condition precedent to the passing of a prejudicial order against an accused person that he has another opportunity of establishing his innocence, even if he has failed to do so before.<sup>3</sup>

In the exercise of its revisional powers, a High Court, upon having the record of a criminal proceeding brought to its notice by an appeal from the conviction therein, can call upon the appellant to show cause why the sentence should not be enhanced, and having heard and dismissed the appeal can forthwith enhance the sentence under the revisional powers although precluded by s. 423 from doing so in the appeal.<sup>4</sup>

The Calcutta High Court has held that in a trial by jury the convicted person is not entitled under this sub-section to go behind the verdict of the jury and show that the conviction was wrong upon the evidence.<sup>5</sup> The Madras High Court has also held that he is not entitled in showing cause against his conviction under this sub-section to go into the facts of the case where he has been convicted as a result of the verdict of a jury. He has only the same right as he has when he comes before the Court by way of an appeal under s. 423, and his position is not different merely because an enhancement of sentence is sought for by the Crown. The words "notwithstanding anything contained in this section" in this sub-section cannot by implication override the express and imperative provisions of s. 423.<sup>6</sup> Similarly

<sup>1</sup> *Ramchandra*, (1932) 35 Bom. L. R. 174.

<sup>2</sup> *Inderehand*, (1934) 36 Bom. L. R. 954.

<sup>3</sup> *Atta Mohammad*, [1944] Lah. 391, F.B.

<sup>4</sup> *Chunbidiya*, (1934) 62 I. A. 36,

37 Bom. L. R. 160, 57 All. 156; *Khodabux Haji*, (1933) 61 Cal. 6.

<sup>5</sup> *Alef Shaikh*, (1935) 62 Cal. 952; *Khodabux Haji*, *ibid.*

<sup>6</sup> *Ratnanabapathy Goundan v. Public Prosecutor, Madras*, (1936) 59 Mad. 904.

the Bombay High Court has held that where his conviction is based on the verdict of a jury, the appellant has no greater right of appeal than he possesses under s. 423 and is not at liberty to challenge the facts or assail the verdict.<sup>1</sup> According to the Allahabad High Court he is entitled to question the conviction by showing only that the Judge misdirected the jury or that the jury misunderstood the law laid down by the Judge in his charge.<sup>2</sup>

The High Court does not exercise the power of enhancing a sentence in every case in which the sentence passed is inadequate. The mere fact that the High Court would itself, if it had been trying the case, have passed a heavier sentence than that which the trial Court had passed, is no reason for enhancing the sentence. The High Court will interfere only where the sentence passed is manifestly and grossly inadequate.<sup>3</sup>

A District Magistrate, a Sessions Judge, or the Government Pleader may draw the attention of the High Court to a sentence with a view to its being enhanced; or the High Court can of its own motion send for the record and take action with a like object. According to the Bombay High Court it is not open to a private party to apply to the High Court for enhancing a sentence passed by a subordinate Court. He can only draw the attention of the Government.<sup>4</sup> The Allahabad and the Calcutta High Courts are of the opinion that a private person can move the High Court in revision for enhancement of the sentence passed by a Sessions Judge,<sup>5</sup> but not as of right.<sup>6</sup> The Nagpur High Court has held that, in a proper case, on the application of a private person, who was the complainant, the High Court has power to enhance a sentence.<sup>7</sup> The same is the view of the Rangoon High Court.<sup>8</sup> The Chief Court of Oudh has held that the High Court has power to enhance the sentence of an accused on the application of a private person, but it should not entertain an application by private parties for enhancement of sentences, as Courts should not be allowed to become tools in the hands of members of the public in giving vent to their private animosities. Further, in dealing with applications for enhancement of sentences, the High Court should have regard to what those responsible for maintenance of peace and order in the locality think of the matter, and where therefore an application for enhancement is rejected by the District Magistrate, as he does not consider it necessary in the interest of justice, the High Court should not interfere.<sup>9</sup>

The sentence to be enhanced must exist in point of fact. Where the accused has already served out his sentence, and is at liberty, the Court cannot enhance the sentence.<sup>10</sup>

**Reduction of sentence.**—If on appeal the High Court is of the opinion that the sentence passed on the accused is too severe, a notice should be served on Government to show cause why the sentence should not be reduced. The record should also be sent for. The notice and appeal should be heard on the same day. If, after hearing the Government Pleader, the High Court comes to the conclusion that the sentence ought to be reduced, it can reduce it under its revisional powers.<sup>11</sup>

<sup>1</sup> *Ramji Vala*, [1940] 42 Bom. L. R. 475, [1940] Bom. 509, commenting on *Ramchandra*, (1932) 35 Bom. L. R. 174.

<sup>2</sup> *Bishwanath*, [1937] All. 308.

<sup>3</sup> *Inderchand*, (1934) 36 Bom. L. R. 954; *Hla San*, [1941] Ran. 595. <sup>4</sup>

<sup>5</sup> *Nagji Dula*, (1924) 26 Bom. L. R. 182, 48 Bom. 358.

<sup>6</sup> *Man Singh v. Scott*, (1930) 53 All. 223; *Ali Akabbar v. Kasem Ali*,

(1929) 81 Cr. L. J. 209.

<sup>7</sup> *Nasir Khan*, [1941] All. 465.

<sup>8</sup> *Shankar v. Rama*, [1942] Nag. 277.

<sup>9</sup> *M. T. Das v. E. D. Aboo*, (1930) 8 Ran. 578.

<sup>10</sup> *Thakur Din and Bhagwan Din v. Som Nath*, (1939) 14 Luck. 401.

<sup>11</sup> *Jagat Singh*, (1920) 1 Lah. 453.

<sup>12</sup> *Bai Dhankor*, (1936) 39 Bom. L. R. 74, [1937] Bom. 365.

**Revision jurisdiction.—Question of fact.**—The terms of the section are wide enough to permit interference with findings of facts; but a practice of long standing has grown up to confine the exercise of the jurisdiction only to questions of law.<sup>1</sup> Yet the High Court does interfere with findings of facts “where there are very exceptional grounds for its interference . . . in the interests of justice”<sup>2</sup> or where there are such exceptional grounds, e.g., a misstatement of evidence by the lower Court, or a misconstruction or misreading of documentary evidence,<sup>3</sup> or the placing by that Court of the onus of proof on the accused contrary to the law of evidence,<sup>4</sup> or to prevent a gross and palpable failure of justice,<sup>5</sup> or where the finding of fact depends on a correct interpretation of the law,<sup>6</sup> or where the lower Courts have approached the case from a wrong point of view and the evidence produced has not received due consideration, or where the findings of fact are not based on evidence on record and are proved to be wrong from the record itself, or where the judgment of the lower Courts is palpably wrong, or where the case appears to be doubtful against the accused and the benefit of doubt has not been given.<sup>7</sup> But the discretion ought not to be crystallized; it should be untrammelled and free so as to be fairly exercised according to the exigencies of each case.<sup>8</sup>

**Pending trial.**—The High Court can interfere at any stage with the proceedings of a Magistrate in a pending trial,<sup>9</sup> where “there is some manifest and patent injustice apparent on the face of the proceedings and calling for prompt redress.”<sup>10</sup> But “no hard and fast rule can be laid down as regards the class of cases in which the High Court will interfere.”<sup>11</sup> There is, however, no interlocutory revision against a Magistrate’s decision that he has jurisdiction in a case.<sup>12</sup>

**Quashing of proceedings.**—The High Court has jurisdiction to quash criminal proceedings pending in the Court of a Magistrate. “Quashing of proceedings” is a term of compendious connotation, and the practical result is the setting aside or reversal of the order initiating the proceedings.<sup>13</sup> In applications to quash pending proceeding, the High Court will only interfere in exceptional cases such as where a person is being harassed by an illegal prosecution; or where there is some manifest

<sup>1</sup> *Sakharam Nago*, (1902) 4 Bom. L. R. 686; *Har Prasad Das*, (1913) 40 Cal. 477, 500, F.B.; *Bhawoo Jivaji v. Mulji Dayal*, (1888) 12 Bom. 377.

<sup>2</sup> *Chagan Dayaram*, (1890) 14 Bom. 331, 336; *Buransahab*, (1904) 6 Bom. L. R. 1096; *Umakant*, (1907) 9 Bom. L. R. 706; *Nandeyappagawda*, (1906) 8 Bom. L. R. 851; *Narayan Shitaram*, (1907) 9 Bom. L. R. 1385, 32 Bom. 111; *Abdul Wahid Khan v. Abdullah Khan*, (1923) 45 All. 656, 661; *Ahsan-ullah Khan v. Mansukh Ram*, (1914) 36 All. 403, 405.

<sup>3</sup> *B. G. Tilak*, (1904) 6 Bom. L. R. 324, 28 Bom. 479.

<sup>4</sup> *Ganesh Bakoant Modak*, (1909) 12 Bom. L. R. 21, 34 Bom. 373; *Nandeyappagawda*, *supra*.

<sup>5</sup> *Buransahab*, *supra*; *Umakant Balwant*, (1907) 9 Bom. L. R. 706; *Narayan Shitaram*, *supra*; *Ahsan-ullah Khan v. Mansukh Ram*, *supra*; *Abdul Wahid Khan v. Abdullah Khan*, *supra*.

<sup>6</sup> *Roshan Singh*, [1940] All. 751.

<sup>7</sup> *Ram Nath Dave*, (1942) 18 Luck. 408.

<sup>8</sup> *Bankatram Lachiram*, (1904) 28 Bom. 533, 6 Bom. L. R. 379; *Phakir Mandal v. Madar Mandal*, (1930) 58 Cal. 1081.

<sup>9</sup> *Ramanathan Chelthiyar v. Subrahmanya Ayyar*, (1924) 47 Mad 722; *Nageshappa Pai*, (1895) 20 Bom. 548; *Shripad Chandavarkar*, (1927) 30 Bom. L. R. 70, 52 Bom. 151; *Chandi Pershad v. Abdur Rahman*, (1894) 22 Cal. 181; *Jagat Chandra Mosumdar*, (1899) 26 Cal. 786; *Hari Charan v. Girish Chandra*, (1910) 38 Cal. 68.

<sup>10</sup> *Jagat Chandra Mosumdar*, *supra*, p. 791.

<sup>11</sup> *Kuppuswami Aiyar*, (1915) 39 Mad. 561, 564.

<sup>12</sup> *Kaneshi Ram Khosla v. R. L. Dikshit*, (1925) 1 Luck. 48.

<sup>13</sup> *S. C. Mitra v. Raja Kali Charan*, (1927) 3 Luck. 287, 290.



and patent injustice apparent on the face of the proceedings and calling for prompt redress; where the evidence on record for the prosecution clearly does not justify a charge of any offence; or where the trial is on the face of it an abuse of the process of the Court.<sup>1</sup>

**Order of discharge.**—The High Court can in revision set aside an order of discharge and direct that the person so discharged be committed for trial.<sup>2</sup>

**Order of acquittal.**—The High Court does not ordinarily interfere in revision with an order of acquittal, on the broad ground that it is always open to the Provincial Government to appeal against it.<sup>3</sup> It will only interfere on the ground of exceptional requirement of justice,<sup>4</sup> or at the instance of public bodies,<sup>5</sup> or where there is some glaring defect either in the procedure or in the view of the evidence taken by the Court below.<sup>6</sup> It is only when the record is incomplete or there is a flaw in jurisdiction or the finding is manifestly wrong or perverse that the High Court will interfere.<sup>7</sup> It will not as a rule interfere with an order of acquittal at the instance of a private party, except where such interference is urgently demanded in the interest of justice.<sup>8</sup> Cases of defamation form an exception to this general rule, as in such cases, which from their very nature affect private parties and not the public, Government would usually be unwilling to interfere.<sup>9</sup> The word "acquittal" is not confined to a complete acquittal on all the charges framed.<sup>10</sup>

**Expiry of sentence.**—The High Court can interfere with a conviction even after the expiry of the sentence, in cases where, for instance, a man's status is altered by his conviction or his prospect of future employment is jeopardised.<sup>11</sup>

**Death of convict.**—The High Court can revise conviction and sentence even after the death of accused.<sup>12</sup>

**Order to compound.**—The High Court can in revision give leave for the composition of an offence.<sup>13</sup>

**Review.**—Under this section the High Court has no power to review its judgment pronounced on revision in a criminal case.<sup>14</sup>

**Revision application by third party.**—The High Court can exercise its revisional jurisdiction under this section at the instance of a person who is a total stranger

<sup>1</sup> *Sherazee*, [1941] Ran. 599.

<sup>2</sup> *Public Prosecutor v. Ponnuswami Nayak*, (1927) 52 Mad. 156; *Varjandas*, (1902) 27 Bom. 84, 4 Bom. L. R. 779; *Hari Dass Sanyal v. Saritulla*, (1888) 15 Cal. 608, 619; *Ram Lal Singh*, (1888) 6 All. 40.

<sup>3</sup> *Jolla v. Parshottam*, (1928) 25 Bom. L. R. 488; *Kangali Sardar v. Bama Charan Bhattacharjee*, (1911) 38 Cal. 786; *Faujdar Thakur v. Kasi Chowdhury*, (1914) 42 Cal. 612; *Asutosh Das Gupta v. Purna Chandra Ghosh*, (1922) 50 Cal. 159; *Qayyum v. Faiyaz Ali*, (1904) 27 All. 859; *Sinnu Goundan*, (1914) 38 Mad. 1028; *Sankaralinga Mudaliar v. Narayana Mudaliar*, (1922) 45 Mad. 918, F.B.; *Gulli Bhagat v. Narain Singh*, (1928) 2 Pat. 708.

<sup>4</sup> *Fareedoon Cawaji*, (1917) 41 Bom. 580, 19 Bom. L. R. 854; *Vellayanambalam v. Solai Seralai*, (1915) 39 Mad. 505; *Mogal Beg*, (1918) 42 Mad. 109;

*Siban Rai v. Bhagwat Dass*, (1925) 5 Pat. 25; *Cantonment Board of Dinapore v. Dwarka Prasad*, (1941) 21 Pat. 102; *Ganpat Rao*, [1944] Nag. 176.

<sup>5</sup> *Ahmedabad Municipality v. Mangalal*, (1906) 9 Bom. L. R. 158.

<sup>6</sup> *Kamikha Prasad*, (1927) 2 Luck. 680.

<sup>7</sup> *Pantap Singh v. Harman Singh*, [1942] Lah. 125.

<sup>8</sup> *Chhaganlal v. Kismi*, [1937] Nag. 168; *Raghunathmal v. Patiram*, [1938] Nag. 157.

<sup>9</sup> *Vinayak Atmaram v. Shantaram Janardan*, (1941) 48 Bom. L. R. 787.

<sup>10</sup> *Shivputraya*, (1924) 48 Bom. 510. 26 Bom. L. R. 488.

<sup>11</sup> *Sinha*, (1884) 7 All. 135.

<sup>12</sup> *Dongaji Andaji*, (1878) 2 Bom. 564.

<sup>13</sup> *Rampiyari*, (1909) 32 All. 153; *Shiboo*, (1922) 45 All. 17.

<sup>14</sup> *C. P. Fox*, (1885) 10 Bom. 176 F.B.; *Durga Charan*, (1885) 7 All. 672.

to the proceedings. If the illegality of a proceeding is brought to the notice of the High Court, it is immaterial who does so—whether he be a party or a stranger—and the Court should take action of its own accord.<sup>1</sup>

**Party in contempt of Court.**—A party who is in contempt of Court cannot be heard in criminal revision, nor is his counsel entitled to an audience.<sup>2</sup>

**Optional with Court to hear parties.** 440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision :

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (2).

**COMMENT.**—In revisional jurisdiction, a party cannot insist upon being heard by the Court. The Court has a discretion to hear a party. This rule applies to an accused as well as to a complainant.<sup>3</sup>

In the trial Court an accused person "may of right be defended by a pleader" (s. 840). In the appeal Court, the appellant or his pleader must have "a reasonable opportunity of being heard in support of his appeal" (s. 421). When a case comes up by way of reference, there are no express provisions in the Code entitling the parties to appear as of right; and in one case, the Bombay High Court<sup>4</sup> denied the right to the accused. Coming to revisional jurisdiction, before an order to make further inquiry is passed against a person who has been discharged, such person should have "an opportunity of showing cause" (s. 436). Similarly, no order can be passed under s. 439 to the prejudice of an accused, "unless he has had an opportunity of being heard either personally or by pleader in his own defence."

In the High Court, it is the practice to hear pleaders in revision.<sup>5</sup> But a counsel has not got any general right of being heard at all in revision.<sup>6</sup>

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

442. When a case is revised under this Chapter by the High Court, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

<sup>1</sup> *Bisheshwar Prasad Sinha*, (1933) 56 All. 158, F.B.

<sup>2</sup> *Sheomandil*, [1938] All. 991.

<sup>3</sup> *Shamdasani*, (1929) 31 Bom. L. R. 1144.

<sup>4</sup> *Devama*, (1875) 1 Bom. 64.

<sup>5</sup> *Ram Nihore Umar*, (1911) 8 A. L. J. R. 237.

<sup>6</sup> *Satnarain Lal*, [1940] All. 539.

## PART VIII. SPECIAL PROCEEDINGS.

### CHAPTER XXXIII.

#### SPECIAL PROVISIONS RELATING TO CASES IN WHICH EUROPEAN AND INDIAN BRITISH SUBJECTS ARE CONCERNED.

THIS Chapter applies to offences punishable with imprisonment alleged to have been committed outside a presidency town. The first step to be taken to secure that such a case shall be tried under the provisions of the Chapter is a claim to be made by the accused person before the Magistrate. Unless such a claim is made at one of the stages indicated for the trial of a summons-case or of a warrant-case, or for the inquiry preliminary to commitment, the provisions of the Chapter will not apply. The Magistrate then makes such inquiry as he thinks necessary. As a guide to the Magistrate in coming to a finding as to whether the case should be tried under the provisions of the Chapter or not, it is provided that if the complainant and the accused persons or any of them are respectively European and Indian British subjects or Indian and European British subjects, he shall find that the case should be tried under the provisions of the Chapter. For other cases with which both European British subjects and Indian British subjects are connected the Magistrate must be satisfied that it is expedient for the ends of justice that the case shall be so tried. If the Magistrate rejects the claim, the person has a right of appeal to the Sessions Judge whose decision is final, and if the claim is rejected by the Magistrate, the Magistrate is required to stay the proceedings until the expiration of the period allowed for the presentation of the appeal, or, if an appeal is presented, until it has been decided. The period allowed for the presentation of an appeal is fixed by Article 156A of the Indian Limitation Act, 1908, at seven days. The persons who will be included within the term "complainant" for the purpose of the provisions are defined by section 444. The procedure in summons-cases punishable with imprisonment is then laid down. For warrant-cases which would normally be triable under the provisions of Chapter XXI of the Code, if it is found that the case ought to be tried under the provisions of this Chapter a Magistrate is required, if he does not discharge the accused, to commit the case for trial to the Court of Session, whether the case is or is not exclusively triable by that Court. Normally in the Court of Session the case will then be tried by a jury of mixed nationality, the majority of the jurors being either Indians or Europeans and Americans according as the accused person is an Indian or a European subject of His Majesty.<sup>1</sup>

A claim to be tried under the provisions of this Chapter is wholly different from a claim to be tried as a European British subject or an Indian British subject or an American. It is the latter claim only which is dealt with in Chapter XLIVA in which ss. 528A and 528B occur. So far as the former claim is concerned, the question of status of the claimant does not always arise, as is evident from the provisions of s. 448 (1) (b). Whereas in a claim to be dealt with as a European British subject, or an Indian British subject, or a European not being a European British subject or an American, the claimant has to prove his own status, in a claim to be tried under the provisions of this Chapter the claimant may or may not have

<sup>1</sup> S. O. R.

to do so. If the latter claim is based upon s. 443 (1) (b), the claimant will have to prove that the complainant, and the accused persons, or any of them, are, respectively, European and Indian British subjects. If it is based on s. 443 (1) (b) the claimant will have to prove that, in view of the connection with the case of both a European British subject and an Indian British subject, it is expedient for the ends of justice that the case should be tried under the provisions of this Chapter; this may or may not involve a question of the claimant's own status. It will also be seen that s. 528A is expressly limited in its operation to a case to which the provisions of this Chapter do not apply, and s. 528B relates only to such cases as are contemplated by s. 528A and s. 449, under which the right of appeal is claimed in this Chapter; consequently, ss. 528A and 528B can have no application to s. 449.<sup>1</sup>

443. (1) Where, in the course of the trial outside a presidency-town of any offence punishable with imprisonment, the accused person, at any time before he is committed for trial under section 213 or is asked to show cause under section 242 or enters on his defence under section 256, as the case may be, claims that the case ought to be tried under the provisions of this Chapter, the Magistrate inquiring into or trying the case, after making such inquiry as he thinks necessary, and after allowing the accused person reasonable time within which to adduce evidence in support of his claim, shall, if he is satisfied—

(a) that the complainant and the accused persons or any of them are respectively European and Indian British subjects or Indian and European British subjects, or

(b) that, in view of the connection with the case of both an European British subject and an Indian British subject, it is expedient for the ends of justice that the case should be tried under the provisions of this Chapter,

record a finding that the case is a case which ought to be tried under the provisions of this Chapter, or, if he is not so satisfied, record a finding that it is not such a case.

(2) Where the Magistrate rejects the claim, the person by whom it was made may appeal to the Sessions Judge, and the decision of the Sessions Judge thereon shall be final and shall not be questioned in any Court in appeal or revision.

(3) Where the Magistrate rejects the claim, he shall stay the proceedings until the expiration of the period allowed for the presentation of the appeal or, if an appeal is presented, until it has been decided.

COMMENT.—The right to make a claim that the case ought to be tried under the provisions of this Chapter is an absolute right of the accused and cannot be defeated except on the merits, and in order to come to a finding on the merits, the Magistrate is required to follow the procedure laid down in the section which is mandatory. It is left to his discretion to make such inquiry as he thinks necessary, but it is not open to him on any grounds whatsoever to refuse the accused person reasonable time and opportunity to adduce evidence in support of his claim. If he does so, his order is improper and should be set aside. The words "rejects the claim" in sub-s. (2) must mean "rejects the claim on coming to a finding on the merits of the claim in compliance with the provisions of sub-s. (1) of s. 443."<sup>2</sup>

<sup>1</sup> *Martindale*, (1924) 52 Cal. 347, 360-1.

<sup>2</sup> *Nitya Nanda Sharma*, [1937] 2 Cal. 741.

Sub-section (2).—Where a Sessions Judge has come to the conclusion that the special procedure of this chapter ought not to apply in a case, it is not open to the High Court to say that it ought to apply. But if the provisions of the Code have been entirely ignored, the High Court has power to put the matter right.<sup>1</sup>

444. For the purposes of section 443, “complainant” means any person making a complaint or, in relation to any case of which cognizance is taken under clause (b) of section 190, sub-section (1), any person who has given information relating to the commission of the offence within the meaning of section 154 :

Definition of “complainant.” of person making a complaint or, in relation to any case of which cognizance is taken under clause (b) of section 190, sub-section (1), any person who has given information relating to the commission of the offence within the meaning of section 154 :

Provided that a Public Prosecutor, a public servant, a member, officer or servant of any local authority, a railway servant as defined in section 8 of the Indian Railways Act, 1890, or an officer or servant of any company, association or other body to which the Provincial Government may, by general or special order published in the Official Gazette, declare the provisions of this section to apply, shall not, by reason only of the fact that he has made a complaint of, or given information of, an offence in his capacity as such Public Prosecutor, public servant, railway servant, member, officer or servant, be deemed to be a complainant within the meaning of this section, nor shall a police-officer be so deemed by reason only of the fact that a report under section 173 relating to a case has been made by or through him.

445. (1) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is a summons-case, the Magistrate trying the same shall direct that the case be referred to a Bench of two Magistrates and shall send a copy of such order to the District Magistrate who shall forthwith provide for the constitution of a Bench of two Magistrates of the first class, of whom one shall be an European and the other an Indian, for the trial of the case.

(2) Where the Magistrates constituting the Bench by which a case is tried under this section differ in opinion, the case, together with their opinions thereon, shall be laid before the Sessions Judge, who may examine any party or recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall thereafter pass such judgment, sentence or order in the case as he thinks fit and as is according to law.

(3) Any person convicted by a Bench under this section shall have the same right of appeal as if he had been convicted by a Magistrate of the first class, and any person convicted by a Sessions Judge under sub-section (2) shall have the same right of appeal to the High Court as if he had been convicted by the Sessions Judge at a trial held by the Sessions Judge under this Code.

(4) In any case in which it is impracticable to constitute a Bench in accordance with the provisions of sub-section (1) in any district, the District Magistrate shall transfer the case for trial by a like Bench to such other district as the High Court may, by general or special order, direct.

<sup>1</sup> *Nitya Nanda Sharma*, [1937] 2 Cal. 741.

(5) Notwithstanding anything contained in this section, the Provincial Government may, by notification in the Official Gazette, direct that all summons-cases tried under the provisions of this Chapter in any district specified in the notification shall be tried as if they were warrant-cases in accordance with the provisions hereinafter in this Chapter laid down for the trial of warrant-cases.

446. (1) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is a warrant-case, the Magistrate inquiring into or trying the case shall, if he does not discharge the accused under section 209 or section 258, as the case may be, commit the case for trial to the Court of Session, whether the case is or is not exclusively triable by that Court.

(2) Where an accused is committed to the Court of Session under sub-section (1), the Court shall proceed to try the case as if the accused had required to be tried in accordance with the provisions of section 275, and the provisions of that section and the other provisions of Chapter XXIII, so far as they are applicable, shall apply accordingly :

Provided that where the trial before the Court of Session would in the ordinary course be with the aid of assessors and the accused, or all of them jointly, require to be tried in accordance with the provisions of section 284A, the trial shall be held with the aid of assessors all of whom shall, in the case of European British subjects, be persons who are Europeans or Americans or, in the case of Indian British subjects, be Indians.

COMMENT.—The provisions of this section are mandatory. Before a Magistrate makes a commitment under sub-s. (1) of this section, he must consider whether there are grounds for discharging the accused under s. 209 or s. 258.<sup>1</sup>

447. If at any stage of an inquiry or trial under this Code it appears to the Magistrate that the case is or might be held to be a case which ought to be tried under the provisions of this Chapter, he shall forthwith inform the accused person of his rights under this Chapter.

448. [References to Sessions Judge to be construed as references to High Court in Rangoon]. Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.

449. (1) Where—  
 (a) a case is tried by jury in a High Court or Court of Session under the provisions of this Chapter,  
 or  
 (b) a case which would otherwise have been tried under the provisions of this Chapter is under this Code committed to or transferred to the High Court and is tried by jury in the High Court, or  
 (c) a case is tried by jury in the High Court in a presidency-town and the High Court grants leave to appeal on the ground that the case would, if it had been tried outside a presidency-town, have been triable under the provisions of this Chapter,

<sup>1</sup> K. T. Keshan, (1933) 12 Pat. 707.

then, notwithstanding anything contained in section 418 or section 428, sub-section (2), or in the Letters Patent of any High Court, an appeal may lie to the High Court on a matter of fact as well as on a matter of law.

(2) Notwithstanding anything contained in the Letters Patent of any High Court, the Provincial Government may direct the Public Prosecutor to present an appeal to the High Court from an original order of acquittal passed by the High Court in any such trial as is referred to in sub-section (1).

(3) An appeal under sub-section (1) or sub-section (2) shall, where the High Court consists of more than one Judge, be heard by two Judges of the High Court.

COMMENT.—This section gives the right of appeal against the decision of a High Court in three classes of cases : (1) Cases tried by jury in a High Court under the provisions of this Chapter, and can only apply to High Courts outside a presidency-town. (2) Cases which would otherwise be tried under the provisions of this Chapter, but are, under this Code, committed to, or transferred to, the High Court and tried by jury in the High Court. In these two classes of cases an absolute right of appeal is given. (3) Cases tried by jury in the High Court in a presidency-town. It is covered by cl. (c). The clause is not well drafted, but its meaning is that "the question of status" is to be decided by the High Court before leave to appeal is granted; and that, if that is decided in the accused's favour, he is entitled as of right to an appeal.<sup>1</sup>

450-463. [*Repealed by s. 27 of Act XII of 1923*].

## CHAPTER XXXIV.

### LUNATICS.

THIS Chapter deals with accused who are lunatics. Section 84 of the Indian Penal Code deals with an accused who is a lunatic *at the time of the commission of the offence* (ss. 469-471). If an accused is a lunatic *at the time of the trial* and therefore incapable of making his defence, the trying Magistrate (s. 464) or the Court of Session (s. 465) shall ascertain on evidence if the accused is a lunatic. If he is so found, then the Magistrate or Court, even if the case is not bailable, may release him on an assurance being given that he will be cared for. If such assurance is not forthcoming, or if he cannot be enlarged on bail, he is detained in safe custody (s. 466). The Magistrate or Court may resume inquiry or trial against the accused at any time (s. 467). If the accused is still insane, he can again be dealt with under s. 466 (s. 468). If, however, the accused appears to be of sound mind at the inquiry or trial, but was a lunatic when he committed the offence, the inquiry or trial must be completed (s. 469). If he is found to have committed the offence, a finding is recorded accordingly, but the accused is acquitted (s. 470). In that event he is detained in safe custody and his case reported to the Provincial Government [s. 471 (1)]. Whenever a person detained under s. 466 is found to be capable of making his defence, he is tried as provided in s. 468 (s. 473). A person detained under s. 466 or s. 471 may, when there is no danger of his doing injury to himself or to others, be either discharged (s. 474) or he may be made over to the care of a relation or friend (s. 475).

<sup>1</sup> Turner, (1925) 52 Cal. 636, 640-1; Martindale, (1924) 52 Cal. 347.

**464. (1)** When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind of accused being and consequently incapable of making his defence, lunatic. the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Provincial Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

(1A) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 466.

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

**COMMENT.**—This section may be compared with s. 841. The former applies to insane persons: the latter to persons, who are not insane but who cannot be made to understand the proceedings, e.g., those who are deaf and dumb.<sup>1</sup>

**465. (1)** If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury, or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, and if the jury or Court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect and shall postpone further proceedings in the case and the jury, if any, shall be discharged.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

**COMMENT.**—Where an accused is found to be insane the Court has not only to put questions to him but should try the fact of his unsoundness of mind by examining the Civil Surgeon or some other medical officer.<sup>2</sup>

**466. (1)** Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the Provincial Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as

<sup>1</sup> *Husen*, (1881) 5 Bom. 262.

<sup>2</sup> *Hira Purja*, (1908) 1 B. H. C. 33.



the Provincial Government may have made under the Indian Lunacy Act, 1912.

**COMMENT.**—The authority of a Magistrate to act under sub-section (1) ceases when the lunatic is handed over to the care of the Provincial Government. If the relative of such a lunatic desires to have the custody of the lunatic he should apply, not to the Magistrate, but to the Government.<sup>1</sup>

**467. (1)** Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Resumption of inquiry or trial.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

**468. (1)** If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

Procedure on accused appearing before Magistrate or Court.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be, and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of section 466.

**469.** When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

**470.** Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

**COMMENT.**—Section 469 read with this section provides that a Magistrate shall acquit the accused when he is satisfied from the evidence given before him

that the accused was at the time of the commission of the crime, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that it was wrong or contrary to law. It is not necessary to establish by medical evidence the insanity of the accused at the time the crime was committed. It is only in proceedings where an inquiry is made as to whether the accused is of unsound mind at the time of the trial and, therefore, incapable of making his defence, that the law makes it requisite for the accused to be examined by a medical officer.<sup>1</sup>

**471. (1)** Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be detained in safe custody<sup>1</sup> in such place and manner as the Magistrate or Court thinks fit, and shall report the action taken to the Provincial Government :

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Provincial Government may have made under the Indian Lunacy Act, 1912.

**(2)** The Provincial Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector General of Prisons under section 473 or section 474.

**COMMENT.**—The Court, in a case where it finds that an offence has been committed by a lunatic, must confine itself to making an order that he should be kept in safe custody in such place and manner as the Court thinks fit. It is then for the Government to decide under their own powers the future fate of the person concerned.<sup>2</sup>

1. 'Detained in safe custody' does not mean detained in the custody of friends or relatives.<sup>3</sup>

**472.** [*Lunatic prisoners to be visited by Inspector General.*] Repealed by Act IV of 1912, s. 101, sch. II.

**473.** If such person is detained under the provisions of section 466, and in the case of a person detained in a jail, the Inspector General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468 ; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

<sup>1</sup> *Kala Nyo*, [1941] Ran. 544.

<sup>2</sup> *Amam Hasan*, (1928) 25 Bom. L. R. 286 ; *Somya Hirya*, (1918) 20 Bom. L. R. 929, 48 Bom. 184 ; *Provincial*

*Government, Central Provinces and Berar v. Krishna*, [1945] Nag. 551.

<sup>3</sup> *Legal Remembrancer v. Sriish Chandra Roy*, (1928) 56 Cal. 208.

**474. (1)** If such person is detained under the provisions of section 466 or section 471; and such Inspector General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the Provincial Government may thereupon order him to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

(2) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Provincial Government, which may order his release or detention as it thinks fit.

**475. (1)** Whenever any relative or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody, the Provincial Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such Provincial Government that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person, and

(b) be produced for the inspection of such officer, and at such times and places, as the Provincial Government may direct, and

(c) in the case of a person detained under section 466, be produced when required before such Magistrate or Court, order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in sub-section (1), clause (b), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production, the Magistrate or Court shall proceed in accordance with the provisions of section 468, and the certificate of the inspecting officer shall be receivable as evidence.

## CHAPTER XXXV.

### PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

**476. (1)** When any Civil, Revenue or Criminal Court<sup>1</sup> is, whether on application made to it in this behalf or otherwise,<sup>2</sup> of opinion that it is expedient in the interests of justice that an inquiry should be made<sup>3</sup> into any

Procedure in cases mentioned in section 195.

offence referred to in section 195, sub-section (1), clause (h) or clause (e), which appears to have been committed in or in relation to a proceeding<sup>1</sup> in that Court, such Court may, after such preliminary inquiry,<sup>2</sup> if any, as it thinks necessary, record a finding to that effect<sup>3</sup> and make a complaint<sup>4</sup> thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate :

Provided that, where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

COMMENT.—This section provides the procedure for offences enumerated in s. 195 (1) (b) and (c). The latter section is an exception to the general rule that any person can complain of an offence (except certain private offences such as defamation, adultery, etc.). When an offence is committed in relation to a public servant [s. 195(a)] the sanction of the public servant should first be obtained. When the offence is in relation to a Court [s. 195(b), (c)] the sanction of the Court should be obtained first.

A civil Court has jurisdiction to make a complaint as regards an abetment of any offence referred to in s. 195 (1) (b). In view of cl. (4) of this section the Magistrate who hears a complaint laid of an offence under s. 195 (1) (b) can convict the accused of abetment of the offence if he holds on the evidence before him that the accused was not a principal but an abettor.<sup>1</sup>

Any civil, revenue or criminal Court can proceed under this section and hold a preliminary inquiry. It should then record a finding, should itself make a complaint in writing, and forward it to the first class Magistrate having jurisdiction. No prosecution should be ordered unless there is a reasonable probability of conviction, though the authority taking action should not decide the question of guilt or innocence. Great care and caution are required before the criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which a prosecution is directed.<sup>2</sup>

Where an application for prosecution under this section was granted by the Collector and the appeal against that order was dismissed by the Commissioner, it was held that the Commissioner heard the appeal as a revenue Court and not as an inferior criminal Court and therefore the High Court could not entertain an appli-

<sup>1</sup> *Tan Ba Cheng v. Registrar, Original Side, High Court, [1940] Rep. 12.*

<sup>2</sup> *Jadu Nandan Singh, (1909) 37 Cal. 250.*

cation for revision against it under s. 439.<sup>1</sup>

The Court should make a complaint and cannot directly order prosecution. The complaint must set forth the offence, the precise facts on which it is based, and the evidence available for proving it.<sup>2</sup>

1. 'Court'.—The term 'Court' indicates that there must be power to record evidence, and to come to a judicial determination on the evidence so recorded.<sup>3</sup> It means not the Court which took cognizance and issued process but the Court which tried and disposed of the original case.<sup>4</sup> The power is given to the Court, not to the individual Magistrate. It includes the successor of the Magistrate.<sup>5</sup> It also includes the High Courts;<sup>6</sup> or the Mamlatdar's Court under the Mamlatdars' Courts Act;<sup>7</sup> or the Income-tax Collector;<sup>8</sup> or a Court in which a deposit is made under s. 88 of the Transfer of Property Act;<sup>9</sup> but it does not include a District Registrar.<sup>10</sup>

2. 'Whether on application made to it in this behalf or otherwise.'—The Court can act on application made to it or *suo motu*. It may be moved by a person who is not a party to the proceedings in relation to which the offence is committed.<sup>11</sup>

3. 'It is expedient in the interests of justice that an inquiry should be made.'—These words, it will be noted, are the key-note to the section. To prosecute people, because they give evidence which is contradictory merely on the basis of that contradiction is a very doubtful procedure.<sup>12</sup>

4. 'Proceeding in that Court.'—The term 'proceeding' includes an execution proceeding.<sup>13</sup> The Court referred to is the Court which takes proceedings under this section. The offence should be committed before that Court.<sup>14</sup> In the case of a High Court, action can be taken by any Judge of the High Court whether the matter out of which the action arose was heard by him or some other Judge of the Court.<sup>15</sup> An offence cannot be said to have been committed in relation to a judicial proceeding unless it has entered as a component into that proceeding, or unless in some manner it has affected that proceeding or been designed to affect it or come to light in the course of it. An offence committed after the close of the proceeding is wholly outside the scope of the provision and the circumstance that the document was still in the custody of the Court does not make the offence one committed in relation to the proceeding which had previously terminated. Forgery

<sup>1</sup> *Thakur Jang Bahadur Singh*, (1943) 19 Luck. 245.

<sup>2</sup> *Ram Prasad*, (1927) 49 All. 752, 753.

<sup>3</sup> *Hanumantha Rao*, (1915) 39 Mad. 414, 418.

<sup>4</sup> *Tarakeswar Mukhopadhyaya*, (1925) 58 Cal. 488.

<sup>5</sup> *Ranga Ayyar*, (1905) 29 Mad. 331; *Bahadur v. Eradatullah Mallick*, (1910) 37 Cal. 642, F.B.; *Nawal Singh*, (1912) 34 All. 393; *Baldeo Prasad*, (1924) 46 All. 851; *Khan Muhammad*, (1922) 4 Lah. 58; *Behram*, (1925) 7 Lah. 108; *Maung Shwe Phe v. Ma Me Hnke*, (1924) 3 Ran. 48.

<sup>6</sup> *Bai Kasturbai v. Vanmakidas*, (1925) 49 Bom. 710, 27 Bom. L. R. 616.

<sup>7</sup> *Bhavdu*, (1912) 15 Bom. L. R. 53.

<sup>8</sup> *Punamchand Maneklal*, (1914) 38 Bom. 642, 16 Bom. L. R. 446, F.B.; *Nataraj Iyer*, (1912) 36 Mad. 72.

<sup>9</sup> *Chamari Singh*, (1924) 4 Pat. 24.

<sup>10</sup> *Manku Bala*, (1914) 16 Bom. L. R. 946.

<sup>11</sup> *Harekrishna Parida*, (1929) 3 Pat. 736; *Bhagwandas Narandas v. Patel & Co.*, (1939) 42 Bom. L. R. 231.

<sup>12</sup> *Keramat Ali*, (1928) 55 Cal. 1812; *Nawabali Khan v. Chandrakanta Banerji*, (1930) 53 Cal. 965.

<sup>13</sup> *Bahadur v. Eradatullah Mallick*, (1910) 37 Cal. 642, F.B.

<sup>14</sup> *Mathuradas*, (1893) 16 All. 80; *Subbaraya Pillai*, (1895) 18 Mad. 487.

<sup>15</sup> *Bai Kasturbai v. Vanmakidas*, (1925) 49 Bom. 710, 27 Bom. L. R. 616.

of an endorsement of payment on a mortgage bond, committed after the termination of the proceeding in which the bond was produced, but while the document was amongst the Court records, cannot be said to have been committed "in or in relation to the proceeding," within the meaning of this section and the Court which disposed of the proceeding has no jurisdiction to take action under it in respect of that offence.<sup>1</sup>

The High Courts of Bombay,<sup>2</sup> Lahore,<sup>3</sup> and Nagpur,<sup>4</sup> have held that this section does not inhibit the Courts from making a complaint in respect of any of the offences specified in s. 195 (1) (c) against persons not parties to a proceeding before it, in which or in relation to which the offence was committed. The High Courts of Allahabad,<sup>5</sup> Calcutta,<sup>6</sup> Madras,<sup>7</sup> Patna,<sup>8</sup> and Rangoon<sup>9</sup> and the Chief Court of Sind<sup>10</sup> have held to the contrary.

5. 'Preliminary inquiry.'—It means only such inquiry as may be necessary.<sup>11</sup> The rulings of the Calcutta High Court are not unanimous on the point whether the inquiry should be made by the Court or not.<sup>12</sup> The holding of preliminary inquiry is optional.<sup>13</sup> The Lahore High Court is of the opinion that such inquiry need not be by the Court itself.<sup>14</sup> A preliminary inquiry is not essential in law and the proceedings under this section without such inquiry are not legal.<sup>15</sup> The Madras High Court has held that what the Court has to decide is (a) whether an offence of the kind contemplated appears to have been committed, and (b) whether it is expedient in the interests of justice that it should be further inquired into. In order to arrive at a decision, the Court may, if it thinks fit, hold such preliminary inquiry as it considers necessary. The nature, method and extent, of the preliminary inquiry are entirely at its discretion. The inquiry need not be such as to satisfy the Court that an offence actually has been committed, but merely that an offence appears to have been committed.<sup>16</sup>

6. 'Record a finding to that effect.'—The Court should record a finding that it is expedient in the interests of justice that an inquiry should be made.<sup>17</sup>

7. 'Complaint.'—It means a regular complaint.<sup>18</sup> It should assign the particular false statements alleged to constitute the offence under s. 193, Indian Penal Code;<sup>19</sup> and should also specify the witnesses to prove the complaint and whether

<sup>1</sup> *Subbarayudu v. Gopayya*, (1931) 55 Mad. 591.

<sup>2</sup> *Balgaunda Ramgaunda Patil*, (1930) 33 Bom. L. R. 296, 55 Bom. 461.

<sup>3</sup> *Balmokand*, (1928) 9 Lah. 678.

<sup>4</sup> *Abdul Rahim Khan v. Pustabai*, [1940] Nag. 652.

<sup>5</sup> *Kushal Pal Singh*, (1931) 53 All. 804, F.B.

<sup>6</sup> *Prabhatranjan Barat v. Umashankar Chatterji*, (1930) 58 Cal. 727.

<sup>7</sup> *Tulsi Ammal v. Danalakshmi Ammal*, (1933) 57 Mad. 682.

<sup>8</sup> *Mathur v. Pitambar*, (1944-45) 24 Pat. 174, dissenting from *Rajkumar Singh*, (1916) 1 P. B. J. 298, 18 Cr. L. J. 135.

<sup>9</sup> *C. T. Guruswamy v. D. K. S. Ebrahims*, (1924) 2 Ran. 374; *Maung Shwe Phe v. Ma Me Hmoke*, (1924) 3 Ran. 48; *Syed Khan*, (1925) 3 Ran.

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<sup>10</sup> *Gobindram*, [1942] Kar. 12.

<sup>11</sup> *Waman Dinkar*, (1918) 43 Bom. 300, 306, 20 Bom. L. R. 908.

<sup>12</sup> *Fazlar Rahaman*, (1930) 58 Cal. 346; *Prabhatranjan Barat v. Umashankar Chatterji*, sup.

<sup>13</sup> *Purnachandra Datta v. Dhali*, (1930) 58 Cal. 374; *H. C. Ganti v. F. L. Harcourt*, (1930) 58 Cal. 215.

<sup>14</sup> *Pir Qadir Bakhsah Shah*, (1924) 6 Lah. 84, 89.

<sup>15</sup> *Mohammad Tahir*, [1940] Lah. 669.

<sup>16</sup> *Raja Rao*, (1926) 50 Mad. 660, 661.

<sup>17</sup> *Chilukuri Ramayya*, (1932) 56 Mad. 157.

<sup>18</sup> *Durjodhan Bhat*, (1925) 52 Cal. 666.

<sup>19</sup> *Kalitsadhan Addya v. Nani Lal Hasra*, (1924) 52 Cal. 478.

the person complained against knew that the evidence he was using as genuine was false.<sup>1</sup> When an offence of perjury is committed before one Judge of a Court of Session, a complaint by any other Judge of that Court is a valid complaint.<sup>2</sup>

**Sub-section (3).**—This sub-section contemplates that the proceeding out of which the inquiry has started should come to a close. Where an appeal is preferred, it is advisable to await the result of the appeal. No proceedings can be taken against a witness during the pendency of the case.<sup>3</sup>

**Stay of proceedings.**—As a rule criminal proceedings should not go on during the pendency of a civil litigation regarding the same subject-matter.<sup>4</sup> It is not desirable ordinarily, if the parties to the two proceedings are substantially the same and the prosecution before the Magistrate is but a private prosecution and the issues in the two Courts are substantially identical, that both the cases should go on at one and the same time.<sup>5</sup> But this is not an invariable rule.<sup>6</sup>

**Complaint.**—A complaint for taking action under the section need not necessarily be made by a party to the proceedings in which a false document is used. Even a stranger to the proceedings can apply.<sup>7</sup> Where the Court once refuses to take action on the application of a party, there is nothing to prevent it from moving under this section.<sup>8</sup>

**Sections 195 and 476.**—Section 195 lays down a rule to be followed by the Court which is to take cognizance of an offence specified therein, but contains no direction for the guidance of the Court which desires to initiate a prosecution in respect of an offence alleged to have been committed in, or in relation to, a proceeding in the latter Court. For that purpose we must turn to s. 476, which requires the Court desiring to put the law in motion to prefer a complaint either *suo motu* or on an application made to it in that behalf, but does not make it incumbent upon the Court to make a preliminary inquiry in every case before starting prosecution. To justify the Court in initiating prosecution, it is necessary only to hold that it is expedient in the interests of justice that an inquiry should be made into an offence referred to in s. 195.<sup>9</sup>

**476A.** The power conferred on Civil, Revenue and Criminal Courts by section 476, sub-section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such Court, by the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), in any case in which such former Court has neither made a complaint under section 476 in respect of such offence nor rejected an application for the making of such complaint;

<sup>1</sup> *Kalyanji v. Ram Deen Lala*, (1924) 48 Mad. 395.

<sup>2</sup> *Superintendent and Remembrancer of Legal Affairs, Bengal v. Iffatulla Paikar*, (1930) 58 Cal. 1117.

<sup>3</sup> *Rustomji*, (1902) 4 Bom. L. R. 778.

<sup>4</sup> *Shri Nana Maharaj*, (1892) 16 Bom. 729; *Jogiah*, (1908) 31 Mad. 510.

<sup>5</sup> *Raj Kumari Debi v. Bama Sundari Debi*, (1896) 23 Cal. 610; *Dwarka Nath Rai Chowdhry*, (1904) 31 Cal.

858, 861.

<sup>6</sup> *Devi valad Bhavani*, (1893) 18 Bom. 581; *Keshav Narayan*, (1912) 14 Bom. L. R. 968; *Dwarka Nath Rai Chowdhry*, (1904) 31 Cal. 858, 861.

<sup>7</sup> *Burnachandra Datta v. Dhalu*, (1930) 58 Cal. 374.

<sup>8</sup> *Harekriahna Parida*, (1929) 8 Pat. 736.

<sup>9</sup> *Per Shadi Lal, C.J.*, in *Pir Qadir Bakhsh Shah*, (1924) 6 Lah. 34, 39.

and, where the superior Court makes such complaint, the provisions of section 476 shall apply accordingly.

**COMMENT.**—This section applies only to cases where the subordinate Court has neither made a complaint *suo motu* nor rejected an application by a party for making such a complaint.<sup>1</sup>

The Bombay High Court has held that an order made by a civil Court under this section is an order made by a criminal Court or by a Court exercising criminal powers. An application in revision to the High Court from such an order may be heard and decided in accordance with the provisions of s. 439 of this Code and not s. 115 of the Civil Procedure Code.<sup>2</sup> The same is the view of the Lahore High Court<sup>3</sup> and the Chief Court of Sind.<sup>4</sup> The High Courts of Calcutta,<sup>5</sup> Madras,<sup>6</sup> and Allahabad<sup>7</sup> have held that such application in revision should be treated as an application under s. 115, Civil Procedure Code.

**476B.** Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or section 476A, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of section 195, subsection (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the subordinate Court might have made under section 476, and if it makes such complaint the provisions of that section shall apply accordingly.

**COMMENT.**—Where the first Court either makes a complaint or refuses to make a complaint under any of the two preceding sections, the appellate Court may withdraw the complaint or may itself make a complaint. No second appeal lies to the High Court against an order passed on appeal under this section.<sup>8</sup> The Bombay High Court has further held that no revision application lies in such a case.<sup>9</sup> The Chief Court of Sind has held that this section is not exhaustive so that the Court's powers in revision are limited by the powers of appeal conferred by it.<sup>10</sup> The Allahabad High Court has held that if the original Court records a finding and makes a complaint, or refuses to make a complaint under s. 476, an appeal lies under this section; a dismissal in default does not amount to a refusal. If there is such a dismissal, the Court concerned under s. 476A, on application or on its own motion,

<sup>1</sup> *Moideen Rowthen v. Miyassa Pulawar*, (1927) 51 Mad. 777.

<sup>2</sup> *Bhatu Sahu*, (1937) 40 Bom. L. R. 297, [1938] Bom. 381, F.B.

<sup>3</sup> *Dhanpat Rai v. Balak Ram*, (1931) 13 Lah. 342, F.B.

<sup>4</sup> *Valiram v. Gobindram*, [1941] Kar. 422.

<sup>5</sup> *Har Prasad Das*, (1918) 40 Cal. 477, F.B.; *Nasaruddin Khan*, (1926) 53 Cal. 327; *Hamid Ali v. Madhu Sudan*, (1926) 54 Cal. 355; *Surendranath Maiti v. Sushilkumar Chakrabarti*, (1931) 59 Cal. 68.

<sup>6</sup> *Karri Venkanna Patrudu*, (1916) 31 M. L. J. 440, F.B.; *Kumaravel v. Shanmuga*, [1940] Mad. 762, F.B. disapproving *Janardana Rao v. Lakshmi*

*Narasamma*, (1933) 57 Mad. 177, F.B.  
<sup>7</sup> *Bhup Kumar*, (1903) 26 All. 249, F.B.; *Abdul Haq v. Sheo Ram*, (1927) 49 All. 536.

<sup>8</sup> *Somabhai Vallabhai v. Aditbhai Parshottam*, (1924) 48 Bom. 401, 26 Bom. L. R. 289; *Ahamadar Rahman v. Dwip Chand Chowdhury*, (1927) 55 Cal. 765; *Moideen Rowthen v. Miyassa Pulawar*, (1927) 51 Mad. 777; *Muhamad Idris*, (1924) 6 Lah. 56; *Ma On Khin v. N. K. M. Firm*, (1927) 5 Ran. 523; *Bismillah Khan v. S. Shakir Ali*, (1926) 4 Luck. 155; *Kesharinandan Ramani*, (1937) 17 Pat. 9, F.B.

<sup>9</sup> *Somabhai Vallabhai v. Aditbhai Parshottam*, sup.

<sup>10</sup> *Valiram v. Gobindram*, sup.



may make a complaint or refuse to make it, in which case an appeal lies to the High Court if the order is made by a Sessions Court.<sup>c</sup> A dismissal in default under s. 476A does not amount to a refusal, and in the event of such dismissal by a Sessions Court, an application in revision lies to the High Court. An appeal under this section can only be filed, therefore, from an order containing a complaint or from an order refusing to make a complaint giving reasons, i.e. from an order equivalent to a judgment.<sup>1</sup>

There is a conflict of judicial opinion on the question whether an appellate Court has jurisdiction to order a remand directing the trial Court to file a complaint or to take further evidence. The High Courts of Allahabad,<sup>2</sup> Lahore,<sup>3</sup> Nagpur,<sup>4</sup> and Rangoon<sup>5</sup> hold that the High Court has no such power. The Madras<sup>6</sup> and the Patna<sup>7</sup> High Courts hold that it has such power. The decisions of the Calcutta High Court are conflicting.<sup>8</sup>

**Starting point of limitation.**—For the purpose of an appeal under this section limitation runs from the date on which the complaint is signed and not from the date on which the complaint is received by the Magistrate, who is to take action on it.<sup>9</sup>

**Death of appellant.**—If the appellant dies pending an appeal, the right of appeal does not survive, and the appeal abates.<sup>10</sup> Appeals under this section are subject to all the provisions applicable to criminal appeals as laid down in s. 419 and the following sections.<sup>11</sup>

**477.** [*Power of Court of Session as to such offences committed before itself.*] Repealed by s. 129 of Act XVIII of 1923.

**478. (1)** When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

**(2)** For the purposes of an inquiry under this section the Civil or Revenue Court may exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and of Chapter XXXIII in cases where that Chapter applies and shall be deemed to have been held by a Magistrate.

<sup>1</sup> *Niranjan Lal Mittal*, [1944] All. 18.

<sup>2</sup> *Manni Lal*, [1937] All. 517.

<sup>3</sup> *Dhanpat Rai v. Balak Ram*, (1931) 13 Lah. 342, F.B.

<sup>4</sup> *Rambilas v. Jaikisan*, [1942] Nag. 388.

<sup>5</sup> *Babu Ramniranjan v. Muk Nath Singh*, [1941] Ran. 764.

<sup>6</sup> *Janardana Rao v. Lakshmi Narasanna*, (1938) 57 Mad. 177, F.B.

<sup>7</sup> *Kunjo Chaudhry*, (1937) 16 Pat. 650.

<sup>8</sup> *Nasaruddin Khan*, (1926) 53 Cal. 827, *Surendranath Maiti v. Sushilkumar Chakrabarti*, (1931) 59 Cal. 38, hold that the High Court has such power. Contra, *Maniar Ahamed Chowdhury v. Jogesh Chandra Roy*, (1928) 55 Cal. 1277.

<sup>9</sup> *Naraindas*, [194C] Kar. 122.

<sup>10</sup> *Nihal Ahmad v. Ramji Das*, (1924) 47 All. 359.

<sup>11</sup> *Muhammad Bayetulla*, (1930) 58 Cal. 402.

**COMMENT.**—This section may be compared with s. 476. Under this section the offence may either be committed before any Court or brought under its notice in the course of a judicial proceeding : whereas, under s. 476 all that is needed is that it must appear that the offence was committed in a proceeding in the Court. Secondly, the offence under this section must be exclusively triable by a Court of Session or be one which ought to be so tried. The Court may in that event constitute itself into a committing Court and may after inquiry commit the case to the Court of Session.

**479.** When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial, and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

**480. (1)** When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

**(2)** Nothing in section 29A or in Chapter XXXIII shall be deemed to apply to proceedings under this section.

**COMMENT.**—This section enables a Court to preserve its decorum and maintain its dignity. It provides a summary remedy to deal with certain kinds of contempt. It gives a special power to a Court to deal with a case of insult offered to the Court in its presence. The Court is not bound to hear any evidence. It can rely on its own opinion of what happened, and can detain the offender in custody, take cognizance of the offence, and sentence him. All this, however, must be done before the rising of the Court, that is, on the same day. It is not permissible to the Court to hear evidence and postpone sentence until a later date.<sup>1</sup> The Allahabad High Court has held that the Court is entitled to postpone passing sentence until some subsequent day if the accused is not thereby prejudiced.<sup>2</sup>

Five classes of contempt are dealt with in the section :

(1) intentional omission to produce a document by a person legally bound to produce it (s. 175, I. P. C. ) ; (2) refusal to take oath when duly required to take one (s. 178, *ibid*) ; (3) refusal to answer questions by one who is legally bound to state the truth (s. 179, *ibid*) ; (4) refusal to sign a statement made to a public servant when legally required to do so (s. 180, *ibid*) ; and (5) intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding (s. 228, *ibid*). European British subjects are not exempt from the operation of the section. The Court may instantly detain the offender in custody, and may take cognizance of

<sup>1</sup> *Shankar Krishnaji Gavankar*, 361 ; *Venkatrao*, (1922) 46 Bom. 973, (1942) 44 Bom. L. R. 439.

<sup>2</sup> *Palambar Bakhsh*, (1889) 11 All.

24 Bom. L. R. 386.

the offence on the same day before the rising of the Court. The offender is liable to pay a fine of Rs. 200 in amount or in case of non-payment to suffer simple imprisonment for one month.

**Scope.**—It will be noticed that only contempts committed in the view or in the presence of the Court come within the purview of this section. Contempts aimed at the Court otherwise are now dealt with by the Contempt of Courts Act (XII of 1926). The High Courts possess the same powers as are possessed by English Supreme Courts under the common law to punish summarily all contempts committed in reference to them.<sup>1</sup>

**481. (1)** In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

Record in such cases.

**(2)** If the offence is under section 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

**COMMENT.**—The remedy improvised by s. 480 being summary, it is provided for the safety of the accused that the record should be in detail. It is necessary that it should show (1) the facts; (2) the statement of the offender; and (3) the finding and sentence. If the offence is one under s. 228 of the Penal Code, then the record must further show, (4) the nature and stage of the proceeding interrupted, and (5) the nature of the interruption or insult. Where possible, the very words used by the offender should be reproduced.<sup>2</sup>

**482. (1)** If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

**(2)** The Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

**COMMENT.**—Where the Court considers that an offence described in s. 480 need not be tried summarily by it or requires a heavier sentence, it can, after recording (1) the facts, and (2) the statement of the accused, forward him to a Magistrate for trial in the ordinary way.

<sup>1</sup> *Surendro Nath Banerjee v. The Chief Justice and Judges of the High Court*, (1883) 10 Cal. 109, 10 I. A. 171; *Venkat Rao*, (1911) 21 M. L. J. 352, F.S.; *G. W. Claridge*, (1912) 14 Bom. L. R. 231; *M. K. Gandhi*, (1920)

22 Bom. L. R. 368; *Valakrishna Govind*, (1921) 46 Bom. 592, 24 Bom. L. R. 16; *Satyabodha*, (1922) 24 Bom. L. R. 928, 47 Bom. 76.

<sup>2</sup> *Dakip Singh*, (1921) 2 Lah. 308.

The Magistrate is not bound to follow the special procedure provided in ss. 480 and 481.<sup>1</sup>

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

483. When the Provincial Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of ss. 480 and 482.

484. When any Court has under section 480 or section 482 adjudged an offender to punishment or forwarded him to a Magistrate for trial for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

COMMENT.—The offence described in s. 480 is curable by satisfactory apology made to the Court, even after the procedure prescribed either by s. 480 or s. 482 has been followed.

485. If any witness<sup>1</sup> or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

COMMENT.—If a witness or a person called to produce a document or thing refuses either to answer questions or produce the document or thing, it is open to the Court to proceed summarily against him (1) by sentencing him to simple imprisonment, (2) by detaining him in custody of an officer of the Court for a period of seven days. But the Court must give its reasons in writing. If the offender relents then he is to be set free; but if he persists, then he can be proceeded against either under s. 480 or s. 482. If, however, the Court is a High Court, the offender is guilty of contempt of Court.

\* 1. 'Witness.'—This term does not include a complainant.<sup>2</sup>

486. (1) Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

<sup>1</sup> *Dipin Chandra Pal*, (1907) 35 Cal. 161.

<sup>2</sup> *Ganesh Narayan Sathe*, (1889) 18 Bom. 600.

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes in a presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the presidency-towns, to the High Court.

**COMMENT.**—Sub-section (1).—Where a Sub-Magistrate takes summary action for contempt of Court and imposes a sentence under s. 480 an appeal against that sentence lies only under this sub-section to the District Magistrate; and the District Magistrate has no right to direct such an appeal to be heard by a Magistrate of the first class subordinate to him.<sup>1</sup>

By virtue of the provision of sub-s. (2) of this section, read with s. 413 there is no appeal when a Magistrate of the first class sentences a person to pay a fine not exceeding rupees fifty under s. 480 of the Code for contempt of a Court.<sup>2</sup>

487. (1) Except as provided in sections 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, shall try any person<sup>1</sup> for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge<sup>2</sup> or Magistrate<sup>3</sup> in the course of a judicial proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court.

**COMMENT.**—1. 'Try any person.'—There has been a divergence of opinion whether the word "try" refers only to the trial of a case or includes also the hearing of an appeal. The High Court of Calcutta<sup>4</sup> inclines to the latter view; while the High Court of Madras<sup>5</sup> has adopted the former view. It seems that the purpose of the section can be carried out by the view that the Judge or Magistrate is precluded not only from trying the case but from hearing the appeal also.

2. 'As such Judge or Magistrate.'—The prohibition implied is "a personal prohibition, the mischief to be prevented being that the same person should not decide a matter which he may have already prejudged."<sup>6</sup> This view is not adopted

<sup>1</sup> *D. K. Reddy*, [1942] Mad. 587. *Novodeep Chunder Pundit*, (1888) 18

<sup>2</sup> *Bhowani Mohan Joardar*, [1944] Cal. 121.

<sup>3</sup> Cal. 81.

<sup>4</sup> *Madhub Chunder Mosumdar v.*

<sup>5</sup> *Kasawatyia*, (1879) 2 Weir 607.

<sup>6</sup> (1877) 1 Mad. 305.

by the High Courts of Bombay<sup>1</sup> and Calcutta,<sup>2</sup> which hold that the Sessions Judge can try an offence which came to his knowledge as a District Judge. The correctness of the latter view requires re-examination. A Magistrate who refuses to set aside an order sanctioning a prosecution on a charge of perjury cannot try the case himself,<sup>3</sup> nor can a Sessions Judge try a person whose trial has been directed by him for the offence of giving false evidence committed in the course of a judicial proceeding of a criminal nature.<sup>4</sup>

## CHAPTER XXXVI.

### OF THE MAINTENANCE OF WIVES AND CHILDREN.

488. (1) If any person<sup>1</sup> having sufficient means<sup>2</sup> neglects or refuses to maintain<sup>3</sup> his wife<sup>4</sup> or his legitimate or illegitimate child<sup>5</sup> unable to maintain itself,<sup>6</sup> the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child,<sup>7</sup> at such monthly rate,<sup>8</sup> not exceeding one hundred rupees in the whole,<sup>9</sup> as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause<sup>10</sup> to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month<sup>11</sup> or until payment if sooner made :

Provided that, if such person offers to maintain his wife<sup>12</sup> on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing :

Provided, further, that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.<sup>13</sup>

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery,<sup>14</sup> or if, without any

<sup>1</sup> *D'Silva*, (1882) 6 Bom. 479;  
*Rajji Daji*, (1898) 18 Bom. 380.

<sup>2</sup> *Sarat Chandra Rakhit*, (1889) 16 Cal. 786.

<sup>3</sup> *Seshadri Ayyangar*, (1896) 20 Mad. 383.

<sup>4</sup> *Mahdum*, (1892) 14 All. 354.

sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.<sup>1a</sup>

(6) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases :

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any orders so made may be set aside for good cause shown on application made within three months from the date thereof.

(7) The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

(8) Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided<sup>1a</sup> with his wife, or, as the case may be, the mother of the illegitimate child.

**COMMENT.**—This section gives effect to the natural and fundamental duty of a man to maintain his wife and children so long as they are unable to maintain themselves. Its provisions apply and are enforceable whatever may be the personal law by which the persons concerned are governed.<sup>1</sup> The object of this section is to avoid vagrancy by providing that a Magistrate may up to a limited extent see that a wife and children are maintained by a husband or father able to maintain them.<sup>2</sup>

A wife or a child has two remedies available for securing maintenance. The first is a suit in a civil Court, in which a decree may be obtained for an amount commensurate with the status or means of the party liable. Even arrears of past maintenance can be recovered. The maintenance can be made a charge on the property. The decree can be enforced against his property in case of his death. The second remedy is a proceeding under this section. It is a cumulative remedy.<sup>3</sup> This remedy is open to a wife or child either legitimate or illegitimate. The mere existence of a decree of a civil Court awarding maintenance to a wife does not oust the jurisdiction of a Magistrate to make an order under this section on the application of the wife. The Magistrate, however, in such a case, should make it clear in his order that anything paid under the decree of the civil Court would be taken into account against anything which he may order to be paid.<sup>4</sup>

The section provides a speedy remedy and a summary mode for enforcing the order. The amount of maintenance is limited to Rs. 100 per month, and the order spends itself on the death of the party charged. The amount can be levied as if it were a fine. The order can be nullified : (1) if the wife is living in adultery, or (2) if she without sufficient reason refuses to live with her husband, or (3) if the parties are living separately by mutual consent.

The right to receive maintenance is a purely personal right created by an order of a criminal Court ; there is no charge created on property by the order for

<sup>1</sup> *Maung Tin v. Ma Hmin*, (1938) 11 Ran. 226, F.B.

<sup>2</sup> *Ebrahim Mahomed v. Khurshed-bai*, (1941) 48 Bom. L. R. 515.

<sup>3</sup> *Lingappa Goundan v. Eudasan*, (1908) 27 Mad. 18, 15.

<sup>4</sup> *Taralakshmi*, (1938) 40 Bom. L. R. 1103.

maintenance, and the maintenance cannot, therefore, be held to be alienable property.<sup>1</sup>

The allowance may be payable from the date of the order or even from the date of the application,<sup>2</sup> but can in no case go beyond it.<sup>3</sup>

1. 'Any person.'—The words "any person" include a Hindu not divided from his father.<sup>4</sup> This section does not contemplate proceedings against a whole family merely because the husband against whom the proceedings are taken is a member of a joint Hindu family. Though the Magistrate may consider what is the property of the family, in considering what sum he should award the wife for maintenance, the order should be passed against the husband himself and not against the joint family.<sup>5</sup> An order made under this section can be enforced against a person even if he resides outside the jurisdiction of the Court.<sup>6</sup> The person against whom proceedings are instituted is not an accused person and therefore it is not incumbent on a Magistrate to examine the husband or father under s. 342 before an order is made.<sup>7</sup>

2. 'Sufficient means.'—This expression is not confined to pecuniary resources, and a mere denial by an able-bodied man of sufficiency of means is not conclusive proof of want of sufficient means. Whether a person has 'sufficient means' must be determined upon a consideration of the circumstances disclosed in each case.<sup>8</sup>

3. 'Neglects or refuses to maintain.'—A neglect or refusal to maintain the wife may be by words or by conduct. It may be express or implied.<sup>9</sup> Once it is proved that a husband or father has refused or neglected to maintain his wife or children, an offer by him to maintain them in the future is not sufficient of itself to debar a Magistrate from making an order for their maintenance,<sup>10</sup> nor an offer to maintain them in a separate house.<sup>11</sup>

'Maintenance' means appropriate food, clothing, and lodging.<sup>12</sup> The Rangoon High Court has held that 'maintenance' must include the minimum amount of education for a child which the conventions of the country call for. In a civilised state a human child cannot be maintained simply by providing it with clothing and food. In the present state of society the mere maintenance of the body is not sufficient; provision has to be made for the child's developing mind and conscience.<sup>13</sup> The Chief Court of Sind has taken a similar view.<sup>14</sup>

4. 'Wife.'—The applicant must be shown to be the wife of the person from whom she claims maintenance.<sup>15</sup> The section applies only to an abandoned wife and not the abandoned mistress.<sup>16</sup>

The right of a wife and of children to be maintained by the husband and by the actual father is a statutory right, and the duty is created by express enactment

<sup>1</sup> *Giribala Debee v. Nirmalabala Debee*, (1934) 62 Cal. 404.

<sup>2</sup> *Hiralal v. Bai Amba*, (1926) 28 Bom. L. R. 669.

<sup>3</sup> *Abdul Rahim v. Amir Begum*, (1926) 7 Lah. 365.

<sup>4</sup> *Ramasami*, (1880) 13 Mad. 17.

<sup>5</sup> *Hemibai v. Kumbibai*, [1941] Kar. 58.

<sup>6</sup> *Gnanambal*, (1928) 52 Mad. 77.

<sup>7</sup> *Mehr Khan v. Bakht Bhari*, (1928) 10 Lah. 406.

<sup>8</sup> *Maung Tin v. Ma Hmin*, (1938) 11 Ran. 226, F.B.

<sup>9</sup> *Bhikain v. Maneckji*, (1907) 9 Bom. L. R. 359.

<sup>10</sup> *Sassoon*, (1925) 49 Bom. 562, 27 Bom. L. R. 359; *Mst. Sarfraz Begam*

*v. Miran Bakhsh*, (1927) 9 Lah. 313.

<sup>11</sup> *Bai Manek*, (1928) 30 Bom. L. R. 958, 52 Bom. 763.

<sup>12</sup> *Arunachal v. Anandayammal*, (1933) 56 Mad. 913.

<sup>13</sup> *Maung Shwe Ba v. Ma Thein Nya*, [1938] Ran. 673.

<sup>14</sup> *Tekchand v. Kalavantibai*, [1941] Kar. 417.

<sup>15</sup> *Gulabdas Bhaidas*, (1891) 16 Bom. 269; *Abdur Rehoman v. Sakhtina*, (1879) 5 Cal. 558.

<sup>16</sup> *Ganeshtibai*, [1943] Kar. 102.



independent of the personal law.<sup>1</sup> Hence, a *mutta* (temporary) wife can claim maintenance from her husband.<sup>2</sup> Illegitimate children born of an adulterous intercourse by a married woman<sup>3</sup> can recover maintenance from the putative father. The wife is not bound to accept the offer by the husband to provide her with a separate residence;<sup>4</sup> though if she leaves her husband's roof without justifying cause she is entitled to no relief.<sup>5</sup>

The wife of a Jain, who becomes a Sadhu, does not lose her status as his wife, and the husband by becoming a Sadhu is not in law excused from maintaining his wife. It is open to him to prove that by reason of the vows he has taken he is incapable of holding any property or of earning any money without incurring serious consequences to himself.<sup>6</sup> Similarly, a Burmese Buddhist monk is amenable to the provisions of this section notwithstanding the fact that he has adopted the yellow robe. It makes no difference whether he does or does not enter the priesthood to avoid the responsibilities as a father.<sup>7</sup> If there is a bona fide re-union between husband and wife the order of maintenance is vacated.<sup>8</sup>

The order for maintenance ceases to operate as soon as the wife is divorced by her husband,<sup>9</sup> though it remains effective so long as the divorced wife is in her *iddat* under Muhammadan law.<sup>10</sup> This personal law of Muhammadans is not abrogated by this section.<sup>11</sup> The plea of divorce can, however, be urged only when the wife applies to recover arrears of maintenance.<sup>12</sup>

5. 'Child.'—The word "child" is not defined in this Code or in the General Clauses Act, 1897. The Madras, the Calcutta<sup>13</sup> and the Rangoon<sup>14</sup> High Courts have held that in the absence of any definition the word 'child' means "a person who has not reached full age," which, under the Indian Majority Act, is eighteen years, and who is incompetent to enter into any contract or to enforce any claim under the law. The Bombay High Court has differed from this view and held that the word 'child' is used with reference to the father, and has no qualification of age—the only qualification being that the child must be unable to maintain itself. The word is not confined to a child who is under the age of majority. A Mahomedan divorced his wife who had two children, a boy aged fourteen years and a girl aged twenty-one. On the application by the wife to recover maintenance for the two children, it was held that the father was bound to maintain them as the section was not confined to children who were under the age of majority.<sup>15</sup>

<sup>1</sup> *Kariyadan Pokkar v. Kayal Beeran Kutti*, (1895) 19 Mad. 461; *Ay-shabai*, (1904) 6 Bom. L. R. 536.

<sup>2</sup> *Luddun Sahiba*, (1882) 8 Cal. 786.

<sup>3</sup> *Rozario v. Ingles*, (1898) 18 Bom. 468.

<sup>4</sup> *Bai Manek*, (1928) 30 Bom. L. R. 958, 52 Bom. 763; *Harnam Kaur*, (1926) 7 Lah. 313; *Rajpati v. Deoli*, (1924) 46 All. 877.

<sup>5</sup> *Gaurishankar v. Bai Reva*, (1903) 5 Bom. L. R. 614.

<sup>6</sup> *Mami Kantivijayaji*, (1932) 34 Bom. L. R. 587, 56 Bom. 260.

<sup>7</sup> *Maung Tin v. Ma Hmin*, (1923) 11 Ran. 226, F.B.

<sup>8</sup> *U Po Shin v. Ma Sein Mya*, (1930) 8 Ran. 460.

<sup>9</sup> *Kasam Pirbhai*, (1871) 8 B. H.

C. (Cr. C.) 95; *Abdul Ali Ishmailji*, (1883) 7 Bom. 180; *Suleman Varai*, (1899) 1 Bom. L. R. 343; *Abdur Rohoman v. Sakhina*, (1879) 5 Cal. 558.

<sup>10</sup> *Din Muhammad*, (1882) 5 All. 226; *Shah Abu Ilyas v. Ulfat Bibi*, (1896) 19 All. 50.

<sup>11</sup> *Shekhanmian*, (1930) 32 Bom. L. R. 532; *Musammam Mariam v. Kadir Bakhsh*, (1929) 5 Luck. 442.

<sup>12</sup> *Purjajal Chunilal*, (1928) 30 Bom. L. R. 617.

<sup>13</sup> *Krishnaswami Ayyar v. Chandravadam*, (1918) 37 Mad. 565; *Hemantakumar Banerji v. Manorama Debee*, (1935) 62 Cal. 639.

<sup>14</sup> *Baran Shanta v. Ma Chan Tha May*, (1924) 2 Ran. 682.

<sup>15</sup> *Ahmed Mahomed v. Bai Fatma*, (1942) 44 Bom. L. R. 919.

The basis of an application for the maintenance of a child is the paternity of the child irrespective of its legitimacy or illegitimacy.<sup>1</sup> A woman may be of bad character and yet be entitled to an order for maintenance of her illegitimate child if she proves that the man against whom she proceeds was the father of the child.<sup>2</sup> Similarly an unchaste wife is entitled to maintenance for her husband's child.<sup>3</sup> An adoptive father is not liable to pay maintenance to his adopted child.<sup>4</sup> A divorced wife entitled to the custody of her children can recover their maintenance.<sup>5</sup> A father is bound to maintain his child even though the child is living with its mother who refuses to return to her husband under a decree for restitution of conjugal rights.<sup>6</sup> When the custody of a child is wrongfully withheld from its father, who is its legal guardian, he cannot be called upon to pay for its maintenance.<sup>7</sup>

6. 'Unable to maintain itself.'—The phrase means "unable to earn a livelihood for itself," that is to say, a complete livelihood, such as an adult person might earn, without depending on any other person.

The maintenance allowed to a girl cannot be cancelled on her marriage without proof that she has thereby become able to maintain herself and ceased to depend upon the maintenance ordered.<sup>8</sup>

7. 'Or such child.'—Power is given to make an order for maintenance of the wife "or such child." Therefore an application can be made for the maintenance of the wife or for the maintenance of the child. There is nothing in the section which says that if such an application is made on behalf of the wife an application shall not lie on behalf of the child.<sup>9</sup>

The word 'child' is used with reference to the father, and has no qualification of age—the only qualification being that the child must be unable to maintain itself. The word is not confined to a child who is under the age of majority.<sup>10</sup>

8. 'Monthly rate.'—The rate awarded should be determinate and fixed. It is not permissible to make an order for maintenance at a progressively increasing rate. The rate may, if necessary, be altered from time to time under the following section.<sup>11</sup> It must refer to a money payment only.<sup>12</sup>

9. 'In the whole.'—The words "in the whole" mean that only a sum of money not exceeding Rs. 100 should be ordered to be paid and no other payment, either in the shape of fees or medical expenses, etc., should be ordered to be paid; nor can the Magistrate order the husband to provide a house for the wife. It is to prevent the Magistrate making an order that the husband should pay so much for the schooling of the children, or so much for clothing, or so much for medical expenses and so on, that the words "in the whole" have been put into the section. The Magistrate can only order one sum not exceeding Rs. 100 to be paid for the wife and for each of the children unable to maintain itself. Every wife and every legiti-

<sup>1</sup> *Nur Mahomed v. Bismulla Jan*, (1889) 16 Cal. 781, 786.

<sup>2</sup> *Hira Lal v. Saheb Jan*, (1895) 18 All. 107, 108; *Lingappa Goundan v. Esudasan*, (1908) 27 Mad. 13, 15.

<sup>3</sup> *Muniammal v. Venkataramanachari*, [1944] Mad. 282.

<sup>4</sup> *Nanu v. Karthayini*, [1937] Mad. 775.

<sup>5</sup> *Ayehabai*, (1904) 6 Bom. L. R. 536; *Allah Rakhi v. Karam Ilahi*, (1933) 14 Lah. 770.

<sup>6</sup> *Maung San Pe v. Ma Lai Mai*, (1932) 10 Ran. 486.

<sup>7</sup> *Dinsab Kasimsab v. Mahamad Hussien*, (1944) 47 Bom. L. R. 345.

<sup>8</sup> *Meenatchi Ammal v. Karuppana Pillai*, (1924) 48 Mad. 503.

<sup>9</sup> *Bulleel v. Bulleel*, [1938] Mad. 729.

<sup>10</sup> *Ahmed Mahomed v. Bai Fatma*, (1942) 44 Bom. L. R. 919.

<sup>11</sup> *Upendra Nath Dhal v. Soudamini Dasi*, (1886) 12 Cal. 535; *Ramayee*, (1890) 14 Mad. 398.

<sup>12</sup> *Mukta v. Dattu*, (1924) 26 Bom. L. R. 186; *Viramma v. Narayya*, (1883) 6 Mad. 283.

mate child and every illegitimate child could be awarded maintenance up to Rs. 100 provided the husband or the father has the means to pay the amounts.<sup>1</sup>

Sub-section (3).—It is necessary, before the order can be enforced by a sentence of imprisonment, that it should be made out that the non-payment of maintenance was the result of wilful negligence on the part of the defendant. A sentence of imprisonment can, therefore, be passed only after there has been wilful neglect to comply with the order, followed by an unsuccessful process of distraint. The imprisonment that is ordered is not a punishment for contempt of the Court's order, but it is for the unpaid portion of the maintenance.<sup>2</sup>

10. 'Sufficient cause'.—An order of adjudication of the husband as an insolvent does not, in itself, amount to rebuttal of an allegation that the insolvent has failed "without sufficient cause" to comply with the order.<sup>3</sup>

11. 'Imprisonment for a term which may extend to one month'.—According to the Madras and the Calcutta High Courts the imprisonment in default of payment of maintenance awarded is not limited to one month. The maximum that can be imposed is one month for each month's arrear; and, if there is a balance representing the arrears of a portion of a month, a further term of a month's imprisonment may be imposed for such arrear.<sup>4</sup> The Allahabad High Court has adopted this view.<sup>5</sup> There is a decision of the Bombay High Court holding that a maximum sentence of one month's imprisonment only can be passed for non-payment of all accumulated arrears.<sup>6</sup> The Bombay decision cannot be regarded as sound law owing to change in the wording of the section in the Code of 1882.

A person who has undergone a sentence of imprisonment on account of his failure to pay certain arrears cannot be sentenced to imprisonment a second time for default in respect of the same identical arrears.<sup>7</sup>

Proviso 1.—12. 'Offers to maintain his wife'.—It is open to the husband to offer to maintain his wife; he cannot be compelled to maintain her 'as his wife.' If the Legislature had meant that the offer was to be one to live with the woman as his wife, it would have used those words.<sup>8</sup> The wife cannot object to live in the house on the ground that the husband has married a second wife.<sup>9</sup>

Proviso 2.—13. 'One year from the date on which it became due'.—The proviso is intended to prevent a person entitled to maintenance from being negligent and allowing arrears to pile up until their recovery would become a hardship or an impossibility. It is not intended for the benefit of the person against whom an order for maintenance is made to evade payment by preventing the service of process on him.<sup>10</sup> Where, therefore, the wife applied on July 18, 1933, for four months' maintenance ending June, 1933, and the case had to be closed as the husband could not be found, and she then applied on May 31, 1934, for fifteen months' maintenance in arrears, it was held that the application lay.<sup>11</sup>

<sup>1</sup> *Kent v. Kent*, (1925) 49 Mad. 891, 896, 897; *Bulleel v. Bulleel*, [1938] Mad. 720, *Palmerino v. Palmerino*, (1926) 28 Bom. L. R. 1299, disapproved on this point.

<sup>2</sup> *Sidheswar Teor v. Gyanada Dasi*, (1904) 22 Cal. 291, 294.

<sup>3</sup> *Radha Rani Dasi v. Mati Lal Sen*, [1940] 9 Cal. 525.

<sup>4</sup> *Akkipichai Ravuthar v. Mohideen Bibi*, (1896) 20 Mad. 3; *Bhiku Khan v. Zakuran*, (1897) 25 Cal. 291.

<sup>5</sup> *Keni*, [1938] All. 751, F.S., overruling *Narain*, (1887) 9 All. 240, F.S.

<sup>6</sup> *Pandu Mahadu*, (1895) Unrep.

Cr. C. 801.

<sup>7</sup> *Maung Kyi Pe v. Ma Htu In*, (1931) 10 Ran. 176; *Ma Tin Tin v. Masing Aye*, [1941] Ran. 65; *Maung Tun Zan v. Ma Myaing*, [1941] Ran. 408.

<sup>8</sup> *Gulabdas Bhaidas*, (1891) 16 Bom. 269, 275, dissenting from *Marakkal v. Kahdappa*, (1888) 6 Mad. 371.

<sup>9</sup> *Arumugam v. Tuluksanam*, (1883) 7 Mad. 187.

<sup>10</sup> *U Hpay Latt v. Ma Po Byn*, (1935) 13 Ran. 289.

<sup>11</sup> *Ibid.*

**Sub-section (4).—14. 'Living in adultery.'**—The term "adultery" is used in the popular sense of the term, viz. breach of the matrimonial tie by either party.<sup>1</sup> It does not mean a single act of adultery. It refers to a course of conduct and means something more than a single lapse from virtue.<sup>2</sup> It is not necessary that the wife should live in the house of the adulterer. The words "living in adultery" are merely indicative of the principle that occasional lapses from virtue are not a sufficient reason for refusing maintenance. Continued adulterous conduct is what is meant by "living in adultery."<sup>3</sup> The fact that the wife had once an illegitimate child is not enough to disqualify her if she led a chaste and respectable life for some two years before the application;<sup>4</sup> but where she has been guilty of adultery with a low caste man, which leads to her expulsion from caste, she is not entitled to maintenance.<sup>5</sup>

The Bombay High Court has held that where an order for maintenance is cancelled on account of the wife living in adultery, such cancellation extinguishes not only her future right of maintenance but also the arrears of her past maintenance.<sup>6</sup> The Calcutta High Court is of the opinion that an order of cancellation of maintenance takes effect from the date of the order and has no retrospective operation. It cannot affect the arrears due up to the date of the order.<sup>7</sup>

**Sub-section (5).—15. 'Mutual consent.'**—'Mutual consent' means a consent on the part of the husband and wife to live apart no matter what the circumstances may be.<sup>8</sup>

**Sub-section (6).**—Where the evidence on which the order is passed is not taken in the presence of the husband or father, and his personal attendance is not dispensed with, the order must be set aside as the direction in this sub-section is peremptory.<sup>9</sup> A Presidency Magistrate is not bound to record evidence in a proceeding under this section.<sup>10</sup>

**Sub-section (8).**—The words "or is" indicate that a Magistrate is competent to entertain an application for maintenance against a person who works for gain within the territorial jurisdiction of such Magistrate although he may not have a permanent residence within such jurisdiction.<sup>11</sup>

The proper Court to take cognizance of the complaint of the wife is the Court within the jurisdiction of which the husband resides.<sup>12</sup> The Allahabad High Court has held that a wife who is living apart from her husband for a good cause may institute an application for maintenance in the district in which she resides.<sup>13</sup>

The word "reside" connotes some sort of permanent intention to stay at a particular place and a mere casual visit to a place other than the one where a

<sup>1</sup> *Gantapalli Appalamma v. Gantapalli Yellayya*, (1897) 20 Mad. 470, 476, F.B., overruling *Mannatha Achari*, (1898) 17 Mad. 260.

<sup>2</sup> *Shivram*, (1890) Unrep. Cr. C. 506; *Gantapalli Appalamma v. Gantapalli Yellayya*, sup.; *Fulchand Maganlal*, (1927) 30 Bom. L. R. 79, 52 Bom. 160; *Patula Aichamma v. Patula Mahalakshmi*, (1907) 30 Mad. 332.

<sup>3</sup> *Kista Pillai v. Amirthammal*, [1938] Mad. 1100; *M. Mya Khin*, [1937] Ran. 85.

<sup>4</sup> *Kalki v. Kaunsiha*, (1904) 26 All. 326.

<sup>5</sup> *Ponnayee v. Periya Moopan*, (1908) 31 Mad. 135.

<sup>6</sup> *Sangavva Gulappa*, (1942) 44 Bom. L. R. 614.

<sup>7</sup> *Tari Bala Sukla v. Kabal Ram Sukla*, [1938] 1 Cal. 509.

<sup>8</sup> *Ram Saran Das v. Mst. Ram Piari*, [1937] All. 430.

<sup>9</sup> *Indu Bala Devi v. Satchid Prasad*, [1939] 2 Cal. 345.

<sup>10</sup> *Chhagan Hargovan*, (1931) 34 Bom. L. R. 276.

<sup>11</sup> *Rupchand Issardas*, [1941] Kar. 415.

<sup>12</sup> *Shaik Fakrudin*, (1884) 9 Bom. 40; *Benbow v. Benbow*, (1897) 24 Cal. 638.

<sup>13</sup> *Malcolm Decastro*, (1891) 13 All. 348.

person has a fixed home, will not be sufficient. In the case of persons who have a fixed residence, a visit to another place for however long a period, so long as it is casual, will not confer jurisdiction. Where, however, the parties have no home of any sort and are moving about from place to place, each place where they so live would be their home for the time being; the sole test being whether a party has *animus manendi* or an intention to stay for an indefinite period, at one place, and if he has such an intention, then alone can he be said to reside there.<sup>1</sup>

16. 'Last resided.'—The term "resided" includes a temporary residence and is not to be confined to permanent residence.<sup>2</sup>

The mere hiring or purchase of a residential building by a person at a place, when he was actually in employment at another place, does not confer jurisdiction on the Magistrate at the place where the building is hired to entertain a petition against that person under this section.<sup>3</sup>

Duration of order.—An order once passed remains in force until it is either cancelled under s. 488(5) or modified under s. 489.<sup>4</sup> The mere fact that a wife has returned to live with her husband will not bring the order to an end automatically, though it would suspend the operation for the period during which she lived with her husband. On her separating from him again, she can enforce it.<sup>5</sup>

Insolvency of husband.—An order of discharge shall not release an insolvent husband from liability under an order for maintenance passed under this section: s. 45(1) (d) of the Presidency-towns Insolvency Act (III of 1909); s. 44(1) (d) of the Provincial Insolvency Act (V of 1920). A protection order, under s. 25 of the Presidency-towns Insolvency Act (1909) does not protect the insolvent against the special statutory power of committal given to a Court under this section to enforce an order to pay maintenance by levying the amount as fine and sentencing the defaulter to suffer imprisonment.<sup>6</sup> A Magistrate who has passed a sentence of imprisonment cannot cancel the sentence merely because an insolvency Court issues an order of protection. Neither the protection order nor the adjudication order can be conclusive on this point.<sup>7</sup>

Death of respondent.—A claim for arrears of maintenance abates on the death of the respondent and cannot be enforced thereafter against his estate.<sup>8</sup>

Civil suit.—An order passed under this section is no bar to a suit for maintenance in a civil Court.<sup>9</sup>

Jurisdiction of criminal Court.—A decree for maintenance passed by a civil Court, which cannot be enforced on account of insolvency of the husband, is no bar to proceedings under this section.<sup>10</sup> Similarly an agreement between the husband and wife to pay the wife maintenance, enforceable in a civil Court, does not oust the jurisdiction of a criminal Court. Anything short of a decree entitling the wife

<sup>1</sup> *Charan Das v. Mt. Surasti Bai*, [1940] Lah. 755; *Khairunnissa*, (1929) 31 Bom. L. R. 931, 58 Bom. 781; *Ram Dei v. Jhunni Lal*, (1926) 1 Luck. 343; *Shambai*, [1941] Nag. 262.

<sup>2</sup> *Sher Singh v. Amir Kumar*, (1927) 49 All. 479.

<sup>3</sup> *Bai Ganga v. Amritlal Purshottam*, (1926) 38 Bom. L. R. 1107.

<sup>4</sup> *Budhni v. Dalal*, (1904) 27 All. 31.

<sup>5</sup> *Kanagammal v. Pandara Nadar*, (1926) 50 Mad. 603; *Pearey Lal*, (1935) 58 All. 379; *John P. E. Coelho v. Mrs. Blanche, wife of John P. Coelho*, [1937]

Nag. 230.

<sup>6</sup> *Mahomed Hussein*, (1940) 42 Bom. L. R. 742, dissenting from *Halfhide v. Halfhide*, (1928) 50 Cal. 867.

<sup>7</sup> *Muni Krishnayya v. Akkulamma*, [1940] Mad. 692.

<sup>8</sup> *Ead Ali v. Lal Bibi*, (1913) 41 Cal. 88; *Lingappa Goundan v. Esudasan*, (1908) 27 Mañ. 13, 15.

<sup>9</sup> *Ghans Kanta Mohanta v. Gereki*, (1904) 32 Cal. 479.

<sup>10</sup> *Mahomedali Mithabhai*, (1929) 31 Bom. L. R. 1366.

to maintenance is not sufficient to oust such jurisdiction.<sup>1</sup>

Where a compromise between a husband and wife covers matters outside the purview of this section an order for maintenance cannot be passed by a criminal Court.<sup>2</sup>

489. (1) On proof of a change in the circumstances<sup>3</sup> of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance<sup>4</sup> as he thinks fit: Provided that if he increases the allowance the monthly rate of one hundred rupees in the whole be not exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

COMMENT.—Where once an order for maintenance is passed under the foregoing section, the amount can be increased or decreased by change of circumstances of the person receiving, or of the person paying, the amount. The order can relate back to the date of the application.<sup>5</sup> It can be cancelled if it is superseded by a civil Court decree, or if the parties have arrived at a compromise.<sup>6</sup>

1. 'Change in the circumstances.'—The phrase refers to a change in the pecuniary or other circumstances of the party paying or receiving the allowance which would justify an increase or decrease of the amount of the monthly payment originally fixed,<sup>7</sup> and not a change in the status of the parties which would entail a stoppage of the allowance.<sup>8</sup> "Change" would include death of the child or the birth of another, and also the fact that the child has grown older.<sup>9</sup>

2. 'Alteration in the allowance.'—According to the Allahabad High Court, alteration refers to a power to alter the amount, and not to a total discontinuance thereof.<sup>10</sup> But, according to the Madras High Court, the reduction of the maintenance to nothing would also come within the meaning of the word "alteration."<sup>11</sup>

Sub-section (2).—Where a suit for restitution of conjugal rights is brought, not with a view to take the wife back, but to evade the payment of maintenance, or the husband fails to comply with the conditions of the decree, e.g. fails to provide a separate accommodation for his wife as required by the decree for restitution, the Magistrate is justified in refusing to cancel the order of maintenance.<sup>12</sup> A decree for restitution of conjugal rights obtained from a civil Court does not necessarily put an end to an order for maintenance previously passed under this section. It is within the discretion of the Magistrate to cancel or vary the order if need be, but the discretion must be exercised judicially. Before cancelling or varying the order

<sup>1</sup> *Sarawati Debee v. Narayandas Chatterji*, (1932) 59 Cal. 1229.

<sup>2</sup> *Ram Saran Das v. Mst. Damodri*, (1934) 16 Lah. 429.

<sup>3</sup> *Hiralal v. Bai Amba*, (1926) 28 Bom. L. R. 669.

<sup>4</sup> *Prabhu Lal v. Rami*, (1902) 25 All. 165.

<sup>5</sup> *Purjatal Chumilal*, (1928) 30 Bom. L. R. 617.

<sup>6</sup> *Shah Abu Ilyas v. Ulfat Bibi*,

(1896) 19 All. 50.

<sup>7</sup> *Ramayee*, (1890) 14 Mad. 398; *Maung Shwe Ba v. Ma Thein Nya*, [1938] Ran. 673.

<sup>8</sup> *Din Muhammad*, (1882) 5 All. 226, 228.

<sup>9</sup> *Meenatchi Ammal v. Karuppana Pillai*, (1924) 48 Mad. 503, 505.

<sup>10</sup> *Maung Po Kwe v. Ma Pwa Shein*, [1939] Ran. 741.

he is entitled, and indeed bound, to satisfy himself that the applicant is bona fide prepared to give effect to the decree of the civil Court and that he is prepared to offer the wife a home which she ought to accept.<sup>1</sup>

490. A copy of the order of maintenance shall be given without Enforcement of payment to the person in whose favour it is made, order of maintenance or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place<sup>1</sup> where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due. "

COMMENT.—The Madras High Court has held that where an application has been made to a Magistrate to enforce an order for maintenance, he is not bound to enforce the order if the defendant proves that the claim for maintenance has been released.<sup>2</sup> But the Allahabad High Court has taken a different view.<sup>3</sup>

1. 'Any place.'—The expression includes a place outside the jurisdiction of the Magistrate who passed the order.<sup>4</sup>

## CHAPTER XXXVII.

### DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

491. (1) Any High Court may, whenever it thinks fit, direct—  
 Power to issue (a) that a person within the limits of its appellate directions of the late criminal jurisdiction be brought up before the nature of a Court to be dealt with according to law;  
*habeas corpus.*

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

(2) The High Court may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818, Madras Regulation II of 1819, of Bombay Regulation XXV of 1827, or the State Prisoners Act, 1850, of the State Prisoners Act, 1858.

<sup>1</sup> *Fakhruddin Shamsuddin v. Bai Jenab*, (1948) 45 Bom. L. R. 897.

<sup>2</sup> *Rangamma v. Muhammad Ali*, (1886) 10 Mad. 18.

<sup>3</sup> *Prabhu Lal v. Rami*, (1902) 25 All. 165.

<sup>4</sup> *Karri Papayamma*, (1881) 4 Mad. 280.

**COMMENT.**—The writ of *habeas corpus ad subjiciendum* is the most celebrated prerogative writ of the English law. It is addressed to him who detains another in custody and commands him to produce the body, with the day and cause of his caption and detention, and to do, submit to, and receive what the Court shall consider in that behalf. The writ is of immemorial antiquity, an instance of its use occurring in the thirty-third year of Edward I. It has through the ages been jealously maintained by Courts of Law as a check upon the illegal usurpation of power by the Executive at the cost of the liege.<sup>1</sup> High Courts in India have no power to issue the common law prerogative writ of *habeas corpus* in matters contemplated by this section.<sup>2</sup> The operation of this section was at first limited to the presidency-towns: now, the powers are extended over territories subject to the appellate criminal jurisdiction of the High Court (s. 491).<sup>3</sup> They can be exercised, in the case of a British European subject, beyond the appellate jurisdiction and over territories appointed by the Central Government (s. 491A). Those powers are:—

(a) that a person may be brought up before the Court and dealt with according to law;

(b) that a person detained in custody be set at liberty:

(c) that a prisoner detained in jail be brought up before the Court and examined as a witness:

(d) that a prisoner detained in jail be brought up before a Court-martial or Commissioners;

(e) that a prisoner be changed from one custody to another for trial;

(f) that a defendant be brought in on Sheriff's return of *cepi corpus* to a writ of attachment.

The High Court has jurisdiction to issue the writ for the production of a person outside British India, provided it is satisfied that he is in the custody, or control of a person within its jurisdiction.<sup>4</sup> The person concerned must be within the limits of the appellate criminal jurisdiction of the Court trying the applications under the section. The fact that the persons concerned were arrested and were at first confined within those limits will not be sufficient if they are not at the time of hearing confined within those limits.<sup>5</sup>

The underlying principle of every writ of *habeas corpus* under this section is to ensure the protection and well-being of the person brought before the Court under that writ. The real interest and well-being of the person ought to be not only the determining but the sole consideration.<sup>6</sup> In dealing with a minor, the Court should have regard to the welfare of the infant irrespective of its age.<sup>7</sup> Due regard must also be had to the ties of affection. If the infant is capable of forming intelligent opinions the Court must take them into consideration.<sup>8</sup>

The writ is not granted where the effect of it would be to review the judgment of one of the superior Courts, which might have been reviewed on a writ of error, or where it would falsify the record of a Court which shows jurisdiction on the face

<sup>1</sup> Per Earl of Birkenhead in *Secretary of State for Home Affairs v. O'Brien*, [1923] A. C. 603, 609.

<sup>2</sup> *Matthen v. District Magistrate, Tifacandrum*, (1930) 66 I. A. 222, 41 Bom. L. R. 1119, [1939] Mad. 744.

<sup>3</sup> *Rameswar Kherotiwalla*, (1928) 56 Cal. 32; *Govindan. Nafr*, (1922) 43 M. L. J. 396, F.B.

<sup>4</sup> *Mahomedali v. Ismailji*, (1926)

28 Bom. L. R. 471, 50 Bom. 616.

<sup>5</sup> *Vishambhar Dayal Tripathi*, (1948)

20 Luck. 338.

<sup>6</sup> *Zarabibi v. Abdul Razzak*, (1910)

12 Bom. L. R. 891.

<sup>7</sup> *Saithri*, (1891) 16 Bom. 307;

*Joshy Assam*, (1895) 23 Cal. 290.

<sup>8</sup> *Saraswathi Ammal v. Dhanakoti Ammal*, (1924) 48 Mad. 299.



of it.<sup>1</sup> The provisions of this section do not give jurisdiction to the High Court to review a conviction and sentence. A writ cannot be granted to persons convicted or in execution under legal process, including persons in execution of a legal sentence after conviction on indictment in the usual course.<sup>2</sup>

The analogy of civil proceedings in which the rights of the parties have ordinarily to be ascertained as on the date of the institution of the proceedings cannot be invoked on an application of the nature of *habeas corpus* under s. 401.<sup>3</sup>

Clause (b).—If a minor, even though with her own consent, remains, in the custody of a person, he must be held to have illegally detained her, if another person, who is better entitled in law to have the custody of the minor, desires to have that custody.<sup>4</sup> The word 'improperly' in this clause cannot include any consideration of the question whether the legislation is proper, but refers to cases in which, although the forms of the law have been observed, there has been a fraud on an Act or an abuse of the powers given by the Legislature. The Courts can and in a proper case must determine the question whether 'there has been such fraud or abuse.'<sup>5</sup> An erroneous conviction, unless it be due to a want of jurisdiction in the Court, cannot furnish a ground for invoking the application of this section in a proceeding by way of *habeas corpus*.<sup>6</sup>

High Court.—An application under the section is ordinarily made before a Judge sitting on the original side; but it can also be made to a Bench on the appellate criminal side.<sup>7</sup> The High Court has no power to award costs in proceedings under this section.<sup>8</sup>

Successive applications.—The common law practice of English Courts, permitting successive identical applications for a writ of *habeas corpus* to be made to the Judges, one after another, of the High Court of Justice, is not applicable to the High Court of Allahabad in the case of applications under this section, inasmuch as the common law of England is not in force in this province, and this High Court has not the common law right of issuing a writ of *habeas corpus*, but only the power conferred upon it by statute for the first time in 1928 of making directions of the nature of a *habeas corpus*.<sup>9</sup>

Appeal.—An appeal lies under cl. 15 of the Letters Patent from an order passed under this section.<sup>10</sup> The Bombay High Court has referred to English practice,<sup>11</sup> but the practice in England is not quite settled.<sup>12</sup> The Allahabad High Court has held that no appeal lies under cl. 10 of the Letters Patent of the Allahabad High Court (as amended in 1919) from an order passed upon an application made under this section, inasmuch as the order is made in the exercise of criminal jurisdiction.<sup>13</sup>

<sup>1</sup> *Bonomally Gupta*, (1916) 44 Cal. 723, 728, S.B.

<sup>2</sup> *Bapat*, [1944] Nag. 728.

<sup>3</sup> *Basanta Chandra Ghose*, [1944] F. C. R. 295, (1945) 24 Pat. 187.

<sup>4</sup> *Subbuswami Goundan v. Kama-kshi Ammal*, (1929) 53 Mad. 72.

<sup>5</sup> *Jitendranath Ghosh v. The Chief Secretary to the Government of Bengal*, (1932) 60 Cal. 384.

<sup>6</sup> *Sadar Diwan Singh*, [1936] Nag. 99.

<sup>7</sup> *Subodh Chandra Roy Chowdhry*, (1924) 52 Cal. 819.

<sup>8</sup> *Ramammal v. Vijayaraghavalu*,

(1928) 55 Mad. 1049.

<sup>9</sup> *Haidari Begam v. Jawad Ali Shah*, (1933) 56 All. 271. See *Eshugbagis Elko v. Government of Nigeria*, [1928] A. C. 459.

<sup>10</sup> *Narrondas Dhanji*, (1890) 14 Bom. 555; *Horace Lyall*, (1902) 29 Cal. 286, F.B.; *Mahomedali v. Ismailji*, (1926) 50 Bom. 616, 28 Bom. L. R. 471.

<sup>11</sup> *Mahomedali v. Ismailji*, *ibid.*  
<sup>12</sup> *Secretary of State for Home Affairs v. O'Brien*, [1928] A. C. 608.

<sup>13</sup> *Haidari Begam v. Jawad Ali Shah*, (1934) 56 All. 899.

**Cepi corpus.**—Where a writ of *capias* or attachment is directed to the Sheriff for execution, he is commanded to return it within a certain time, together with the manner in which he has executed it. If the Sheriff has taken the defendant, and has him in custody, he returns the writ together with an endorsement on the back stating that he has taken him, which is technically called a return of *cepi corpus*.

**491A.** Any High Court established by Letters Patent may exercise the powers conferred by section 491 in the case of any European British subject within such territories, other than those within the limits of its appellate criminal jurisdiction, as the Central Government may direct.

Powers of High Court outside the limits of appellate jurisdiction.

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## PART IX.

### SUPPLEMENTARY PROVISIONS.

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#### CHAPTER XXXVIII.

##### OF THE PUBLIC PROSECUTOR.

**492. (1)** The Provincial Government may appoint, generally, or in any case, or for any specified class of cases, in Public Prosecutors. any local area, one or more officers to be called Public Prosecutors :

**(2)** The District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below such rank as the Provincial Government may prescribe in this behalf to be Public Prosecutor for the purpose of any case.

**COMMENT.**—Next in importance to the impartiality of the tribunal is the integrity of the person in charge of the prosecution, namely, the Public Prosecutor. He is not a protagonist of any party. In theory he stands for the Crown in whose name all prosecutions are conducted. "It must be remembered that all offences affect the public as well as the individual injured, and that in all prosecutions the Crown is the prosecutor. . . . The Crown either proceeds itself, or lends the sanction of its name. The offence is dealt with as an invasion of the public peace, and not a mere contention between the complainant and the accused."<sup>1</sup> The purpose of a criminal trial "is not to support at all costs a theory, but to investigate the offence and to determine the guilt or innocence of the accused, and the duty of a Public Prosecutor is to represent not the police, but the Crown, and his duty should be discharged by him fairly and fearlessly, and with a full sense of the responsibility that attaches to his position."<sup>2</sup> "The counsel for the prosecution. . . should not by statement aggravate the case against the prisoners, or keep back a witness because his evidence may weaken the case for the prosecution. His only object should be

<sup>1</sup> *Murarji Gokuldas*, (1888) 18 Bom. 389, 390-91.

<sup>2</sup> Per Jenkins, C. J., in *Ram Ranjan Roy*, (1914) 42 Cal. 422, 423.

to aid the Court in discovering truth. A public prosecutor should avoid any proceeding likely to intimidate or unduly influence witnesses on either side. There should be on his part no unseemly eagerness for, or grasping at, conviction."<sup>1</sup>

**493.** The public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein, under his directions.

**COMMENT.**—If a private person instructs counsel or pleader, he can only appear subject to the specific provisions which reserve to the Public Prosecutor the management of the case and prescribe that the counsel or pleader is to act under his directions. The Public Prosecutor may avail himself of the assistance of counsel retained by a private individual. In so availing himself of the counsel's services, the Public Prosecutor by no means deprives himself of the management of the case. The two may work in harmony; if they do not, the counsel may retire, or the Public Prosecutor may claim to keep the further conduct of the case solely to himself.<sup>2</sup>

**494.** Any Public Prosecutor<sup>1</sup> may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,—

(a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

**COMMENT.**—Clause (a) of the section covers those cases in which a jury trial is in fact being held; all other cases are covered by clause (b). When the accused has been committed to the Court of Session, but a jury trial has not begun, the case is not within cl. (a) but is within cl. (b). The Sessions Judge may permit withdrawal of a case by the Public Prosecutor before the jury is empanelled.<sup>3</sup>

1. 'Any Public Prosecutor.'—These words imply that the prosecution referred to is one which is already being conducted by the Public Prosecutor. Unless the Public Prosecutor is already in charge of the prosecution he cannot withdraw from it.<sup>4</sup>

The Public Prosecutor can withdraw prosecution against one or all of the accused, or can withdraw some of the charges against any or all of the accused. If the withdrawal takes place before the charges are framed, the accused can only be discharged: but the accused would be entitled to acquittal, if the prosecution is withdrawn after the framing of the charge.

<sup>1</sup> Per Westropp, C. J., in *Kashinath Dinkar*, (1871) 8 B. H. C. (Cr. C.) 126, 153.

<sup>2</sup> *Giribala Dasee v. Madar Gasi*, (1932) 60 Cal. 233.

<sup>3</sup> *Narayan M. Pendshe*, (1874) 11 B. H. C. R. 102.

<sup>4</sup> *Ratanah Kavasji v. Kalki Behramsha*, (1944) 46 Bom. L. R. 808.

With this section may be compared s. 388, which enables the Advocate General to withdraw from prosecution in a trial before the High Court. It will, however, be noted that ordinarily such withdrawal amounts to a discharge, unless the presiding Judge directs that it should amount to an acquittal.

In England, under similar circumstances, it is open to the Attorney General to enter *nolle prosequi*, the effect of which is that all proceedings on the indictment are stayed and the accused discharged, but he is liable to be indicted afresh on the same charge.

The ground of "public policy" is not a proper and sufficient ground for a withdrawal of a case.<sup>1</sup>

**Security proceedings.**—This section has no application to security proceedings. It applies only where the proceedings could end in an acquittal or discharge of the accused. A proceeding under s. 107 does not terminate in either of these ways.<sup>2</sup>

**Reasons for order.**—An order according consent under this section is a judicial one, and, in the opinion of the Calcutta High Court, the reasons therefor should be stated in order to enable the High Court on revision to determine the propriety of the exercise of its discretion by the lower Court.<sup>3</sup> The Rangoon High Court<sup>4</sup> and the Chief Court of Sind<sup>5</sup> are of the same opinion. The Madras,<sup>6</sup> the Patna<sup>7</sup> and the Lahore<sup>8</sup> High Courts have held that the section does not expressly require the Court to give any reasons for consenting to the withdrawal and the High Court cannot interfere even though no reasons have been recorded. The Nagpur High Court has held that it is not incumbent for a Magistrate to give reasons, but it is desirable that reasons should be given in order to enable the High Court to judge whether the withdrawal has been rightly made.<sup>9</sup>

**Discharged accused, competent witness.**—A Court may consent to the Public Prosecutor withdrawing from the prosecution of any person under cl. (a) of this section for the purpose of obtaining that person's evidence as a witness. Where s. 387 is available it is better to tender a conditional pardon under that section than consenting to the withdrawal of the case before the charge is framed.<sup>10</sup>

#### 495. (1) Any Magistrate inquiring into or trying any case may

Permission to permit the prosecution to be conducted by any conduct prosecution person other than an officer of police below the rank to be prescribed by the Provincial Government in this behalf but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Provincial Government in this behalf, shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that

<sup>1</sup> *Sitoldas*, [1948] Kar. 18.

<sup>2</sup> *Muthia Moopan*, (1911) 36 Mad. 315, 317; *Ba Khin*, [1940] Ran. 226.

<sup>3</sup> *Rajani Kanta Shaha v. Idris Thakur*, (1921) 48 Cal. 1105; *G. V. Ramani*, (1929) 56 Cal. 1023.

<sup>4</sup> *Abdul Gani v. Abdul Kader*, (1924) 1 Ran. 756.

<sup>5</sup> *Fakirchand v. Murad*, [1941] Kar. 82.

<sup>6</sup> *Sadayan*, (1908) 11 Cr. L. J. 193.

<sup>7</sup> *Gulfi Bhagat v. Narain Singh*,

(1928) 2 Pat. 708.

<sup>8</sup> *Lakshmi Narain v. Mohammad Hanif*, (1932) 33 Cr. L. J. 337, [1932] AIR (L) 868.

<sup>9</sup> *Satwarao Nagorao Hatkar v. Kanbarao Bhago Rao Hatkar*, [1939] Nag. 393; *Dattatraya Govindrao Patode v. Satheshwar Balkrishna Wakhre*, [1959] Nag. 85.

<sup>10</sup> *Hari Har Singha*, [1937] 1 Cal. 711; *Hussain Haji*, (1900) 25 Bom. 422, 2 Bom. L. R. 1095.

section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

**COMMENT.**—The proper authority to deal with an application for permission to conduct the prosecution is the Magistrate himself. In the prosecution of a case of murder an advocate privately engaged is not a proper person to conduct the prosecution, for the Crown stands not necessarily for a conviction but for justice.<sup>1</sup>

There is no provision in the Code that arguments shall be heard by a Magistrate in Magisterial cases. In not allowing the prosecution to argue its case a Magistrate is, therefore, not guilty of any illegality, however desirable it may be that a Magistrate should give opportunity for arguments.<sup>2</sup>

Sub-section (4).—An Excise Officer is not an “officer of police” within the meaning of this sub-section.<sup>3</sup> This sub-section does not apply to security proceedings under Chapter VIII, and therefore a police officer who makes the investigation can conduct the case in Court, though it is undesirable that he should do so.<sup>4</sup>

## CHAPTER XXXIX.

### OF BAIL.

PROVISIONS as regards bail can be broadly classed into two categories: (1) bailable cases, and (2) non-bailable cases. In the former class, the grant of bail is a matter of course. It may be given either by the police-officer in charge of a police-station having the accused in his custody or by the Court. The release may be ordered on the accused executing a bond and even without sureties (s. 496). In non-bailable cases, the accused may be released on bail: but no bail can be granted where the accused appears on reasonable grounds to be guilty of an offence punishable either with death or with transportation for life. But the rule does not apply to (1) a person under sixteen years of age, (2) a woman, or (3) a sick or infirm person. As soon as the reasonable grounds for the guilt cease to appear, the accused is entitled to be released on bail or on his own recognizance; he can be also released, for similar reasons, between the close of the case and delivery of the judgment. When a person is released on bail, the order with its reasons should be in writing. A person released on bail may be taken into custody by the Court of Session or the High Court (s. 497). In the same way the High Court or the Court of Session may admit a person to bail or reduce the amount of the bail (s. 498). As soon as the bail bond is executed, the accused is entitled to be released from custody (s. 500). When the amount of bail taken is found to be insufficient, the Court may demand additional bail (s. 501). A surety who is once accepted is at liberty to apply to the Court for his discharge; and the accused is then called upon to find fresh sureties (s. 502).

The Code entrusts the power to enlarge a person on bail to police-officers and Courts. Police-officers are empowered by ss. 57 (2), 59 (3), 169, 170, 496 and 497.

<sup>1</sup> *Ahmed*, [1940] Kar. 482.

<sup>2</sup> *Gopal Shinde*, (1933) 35 Bom.

<sup>3</sup> *Radhey Shyam*, (1944) 20 Luck.

<sup>4</sup> L. R. 376, 57 Bom. 441.

<sup>5</sup> *Manik*, [1943] Kar. 23.

Courts have the same power under ss. 76, 86, 91, 186, 217, 426, 427, 466, 475, 476, 496 and 497. Presidency Magistrates are invested with the power by s. 482, and the District Magistrates, by s. 438. The Sessions Judge can exercise the power under ss. 307, 408 and 498; and the High Courts, under ss. 426, 434, 488 and 498.

The discretionary power of the Court to admit to bail is not arbitrary, but is judicial; and is governed by established principles. The object of the detention of the accused being to secure his appearance to abide the sentence of law, the principal inquiry is, whether a recognizance would effect that end. In seeking an answer to this inquiry, Courts have considered the seriousness of the charge, the nature of the evidence, the severity of the punishment prescribed for the offence, and, in some instances, the character, means and standing of the accused.<sup>1</sup>

**496.\*** When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond, without sureties for his appearance as hereinafter provided:

Provided, further, that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3).

**COMMENT.**—Where a person who is arrested is not accused of a non-bailable offence, no needless impediments should be placed in the way of his being admitted to bail. In such cases the man is ordinarily to be at liberty, and it is only if he is unable to furnish such moderate security, if any, as is required of him, as is suitable for the purpose of securing his appearance before a Court pending inquiry, that he should remain in detention.<sup>2</sup> The section is imperative, and under its provisions the Magistrate is bound to release the person on bail or recognizance.<sup>3</sup>

This section does not state that a person released must give a bond himself. The person giving bail enters into a contract with a penalty clause to produce the accused person before a Magistrate when called upon. He is the principal. The person for whom bail is given is the subject of the contract. If the person giving bail fails to perform his contract then the penalty clause may be put into operation against him although it is not necessary to exact the penalty in full.<sup>4</sup>

**497. (1)** When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds

<sup>1</sup> *Nagendra Nath Chakravarti*, (1923) 51 Cal. 402, 416; *Robinson*, (1854) 28 L. J. Q. B. 286, 287; *Rose*, (1898) 18 Cox 717, 719.

<sup>2</sup> *Mir Hashamali*, (1917) 20 Bom.

L. R. 121.

<sup>3</sup> *Raghumandan Pershad*, (1904.) 32 Cal. 80, 83.

<sup>4</sup> *Indar*, [1941] Lah. 519.

\* **Burma amendment.**—In Burma, after the words “an officer in charge of a police station,” read the words “or by an investigating officer not below the rank of Head Constable” (Burma Act II of 1940).

for believing that he has been guilty of an offence punishable with death or transportation for life :<sup>1</sup>

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.

(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

COMMENT.—This section gives the Court or a police-officer power to release an accused on bail in a non-bailable case, unless there appear reasonable grounds that the accused has been guilty of an offence punishable with death or with transportation for life. But (1) a person under the age of sixteen years; (2) a woman; or (3) a sick or infirm person may be released on bail even if the offence charged is punishable with death or transportation for life. Where a person is charged with a non-bailable offence, but it appears in the course of the trial that he is not guilty of such offence, he can be immediately released on bail pending further inquiry. The same may be done after the conclusion of a trial and before judgment is pronounced, if the person is believed not to be guilty of a non-bailable offence. As a safeguard the section provides review of the order either by the Sessions Court or the High Court.

1. 'Reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life.'—The main question to consider is—'are there reasonable grounds for believing that the petitioner is guilty of the offence of which he has been accused.' Other considerations must also arise in deciding the question of releasing the accused on bail, and one of these, which has always guided Courts of Justice, both in England and India, is whether there are any grounds for supposing that the accused, if released on bail, would abscond and attempt to escape justice by avoiding or delaying an inquiry or trial.<sup>1</sup> While mere vague allegations that the prisoner, if released, will tutor witnesses, should not be taken into account, the Magistrate may well refuse to enlarge on bail where

<sup>1</sup> *Jamini Mullick*, (1906) 36 Cal. Bom. L. R. 1072. 174, 177; *Keshav Kortikar*, (1938) 35

the prisoner is of such a character that his presence at large will intimidate witnesses, or where there are reasonable grounds for believing that he will use his liberty to suborn evidence.<sup>1</sup>

'Death or transportation for life.'—This phrase is to be read disjunctively. It covers not only offences punishable with death, but also those punishable with transportation for life.<sup>2</sup>

Sub-section (5).—The power to cancel a bail rests in the Court that granted it, or in the Court of Session or the High Court, not in the District Magistrate.<sup>3</sup> But an order made by one Magistrate releasing an accused person on bail pending trial can for proper reasons be cancelled by another Magistrate to whom the case may be transferred for trial.<sup>4</sup>

498. The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

COMMENT.—In exercising its discretion under this section, the High Court need not confine its attention to the question whether the prisoner is or is not likely to abscond, as other circumstances may also affect the question of granting bail to persons accused of having committed crimes of a grave and serious nature.<sup>5</sup> The principles underlying s. 497 are to be kept in view.<sup>6</sup> But a full bench of the Allahabad High Court has held that this section gives an unfettered discretion to the High Court or the Court of Session to admit an accused person to bail. It is a mistake to imagine that it is controlled by the limitations of s. 497 except when there are not reasonable grounds for believing that the accused committed the offence or there are reasonable grounds for believing that he is not guilty, in which case it becomes a duty to release him.<sup>7</sup>

Bail is not to be withheld merely as a punishment, and the requirements as to bail are merely to secure the attendance of the accused at the trial. The test is to be applied by reference to the following considerations amongst others: (1) the nature of the accusation; (2) the nature of the evidence in support of the accusation; (3) the severity of the punishment which conviction will entail; (4) the character of the sureties, that is to say, whether they are independent or indemnified by the accused; (5) the character and the behaviour of the accused. Any allegation that the accused is tampering or attempting to tamper with witnesses and thereby obstructing the course of justice would be a very cogent ground for refusing bail.<sup>8</sup>

A Sessions Judge has no jurisdiction to release an accused person, after convicting him, on bail pending his appeal to the High Court,<sup>9</sup> though he can do so,

<sup>1</sup> *Mohammed Eusoof*, (1925) 3 Ran. 538, 542; *Hanifabai*, (1930) 32 Bom. L. R. 1499.

<sup>2</sup> *Nga San Hwa*, (1927) 5 Ran. 276, F.B.; *Naranji Premji*, (1928) 30 Bom. L. R. 622.

<sup>3</sup> *Sadashiv*, (1896) 22 Bom. 549.

<sup>4</sup> *Rautmal Kanumal*, (1939) 41 Bom. L. R. 1232, [1940] Bom. 38.

<sup>5</sup> *Narendra Lal Khan*, (1908) 36 Cal. 166, 170; *Vamini Mullick*, (1908) 36 Cal. 174, 177.

<sup>6</sup> *Sourindra Mohan Chuckerbutty*, (1910) 37 Cal. 412, 417; *Ashraf Ali*, (1914) 42 Cal. 25; *H. M. Boudville*, (1924) 2 Ran. 546; *Nga San Hwa*, sup.; *Keshav Kortikar*, (1933) 35 Bom. L. R. 1072.

<sup>7</sup> *Joglekar*, (1931) 54 All. 115, F.B.; *Krishan Gopal*, (1933) 15 Lah. 39.

<sup>8</sup> *Krishna Chandra Jagati*, (1927) 6 Pat. 802, 803.

<sup>9</sup> *Busappa*, (1901) 4 Bom. L. R. 551.



when a reference is made under s. 123(3).<sup>1</sup> The High Court can admit a person to bail pending the decision of the Privy Council ;<sup>2</sup> though it will not do so, either under cl. 41 of the Letters Patent or under this section, merely to enable an unsuccessful applicant before it to apply for special leave to appeal to the Privy Council.<sup>3</sup>

**499. (1)** Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

**(2)** If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

**COMMENT.**—An accused person is entitled as of right to bail, provided the necessary conditions prescribed by law are fulfilled, and his sureties cannot be rejected unless the Magistrate is not satisfied about either their identity, solvency or reliability.<sup>4</sup>

Where the High Court directed the release of an accused on bail to the satisfaction of the District Magistrate, and the latter demanded a cash deposit as a condition to release, it was held that this was not what the law contemplated or authorised ; that chapter XXXIX contemplates the execution of a bond with sureties and under this section the amount of the bond is not to be excessive and is to be fixed according to the circumstances of each case.<sup>5</sup>

**Sub-section (2).**—A surety bond which omits to mention the name of the Court in which and the date on which the surety is to produce the accused cannot be enforced.<sup>6</sup>

**500. (1)** As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

**(2)** Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

**COMMENT.**—When a Court orders the release of an accused person under this section it has no right or power to put any restrictions on the accused's movements, and when an accused person is released on the suretyship of another, the intention is that the surety should have control over his movements. Otherwise, there is no sense in making the surety responsible for the attendance of the accused in Court. Where a person stood surety for a woman who was being prosecuted under s. 890 of the Penal Code but in spite of the fact that the Magistrate took bail from

<sup>1</sup> *Ahmed Ali Sardar*, (1928) 50 Cal. 969 ; *Rasulbux*, [1942] Kar. 278.

<sup>2</sup> *Subrahmanya Ayyar*, (1900) 24. Mad. 161 ; *Ram Sarup*, (1926) 49 All. 247.

<sup>3</sup> *Tulsi Telini*, (1923) 50 Cal. 585.

<sup>4</sup> *Banaridas*, [1937] Nag. 168.

<sup>5</sup> *Rajballam Singh*, (1943) 22 Pat.

<sup>6</sup> *Chintaram*, [1937] Nag. 137.

the accused he ordered her to be sent to a woman's relief association, and she failed to appear on the date fixed for hearing and thereupon the Magistrate ordered a portion of the amount of the bond to be forfeited, it was held that so long as the accused lived in the association under the order of the Court, she was virtually in the custody of the Court, that is to say, she was not released within the meaning of this section and the surety was not bound by the term of his bond and the order of forfeiture was<sup>1</sup> wrong.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

502. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

COMMENT.—When a surety applies for the cancellation of his bond there is no such thing as hearing the application on the merits. The presentation of the application itself imposes upon the Magistrate the duty of issuing a warrant for the arrest of the accused. Even if the surety fails to appear at a subsequent hearing, the Magistrate has to act under the section.<sup>2</sup>

## CHAPTER XL.

### OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

In civil cases, the Courts have power to issue commissions for examination of witnesses under ss. 75 to 78 and Order XXVI, rules 1-8, of the Civil Procedure Code. This Chapter vests like powers in certain Magistrates and criminal Courts.

The power to issue commissions in criminal cases is conferred on a (1) Presidency Magistrate, (2) District Magistrate, (3) Court of Session, or (4) the High Court. It is confined only to those cases where the examination of a witness is necessary for the ends of justice and an unreasonable amount of delay, expense or inconvenience would be caused in procuring his attendance. If the witness resides outside the presidency-towns, the commission may issue to a District Magistrate or a first class Magistrate. If he resides in a presidency-town, it may issue to a Presidency Magis-

<sup>1</sup> *Raghubar Dayal*, (1937) 13 Luck. 720.

<sup>2</sup> *Anant Shivaji*, (1907) 9 Bom. L. R. 1285.

trate. If he resides in an Indian State, it may issue to the officer representing the Crown Representative. If any lower Magistrate desires to issue a commission he must apply to the District Magistrate for the purpose. The witness on commission may be examined either on interrogatories or *visà voce* by the parties. The depositions so taken may be read in evidence by either party and shall form part of the record of the case. It is open to the Court or Magistrate to adjourn the trial or inquiry for the reception of such evidence.

The provisions of this chapter for the examination of witnesses on commission are controlled by s. 256. An accused person may refrain from putting in any cross-interrogatories when the commission is first issued and may apply, at a later stage, when the charge is framed, for re-issue of the commission together with his cross-interrogatories.<sup>1</sup>

**503.** (1) Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness<sup>1</sup> is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(2)\* When the witness resides in an Indian State the commission may be issued to the officer, who is, for the time being, the Political Agent for such State, and when the witness resides in a Tribal Area, the commission may be issued to the officer exercising the powers of a District Magistrate in, or in relation to, such area ;

(2A)† When the witness resides in British Burma, the commission may be issued to any District Magistrate or Magistrate of the first class within the local limits of whose jurisdiction in British Burma such witness resides.

(3) The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he, or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

(4)‡ Where the commission is issued to such officer as is mentioned

<sup>1</sup> *D'Imbrain v. Someshwar Chaudhuri*, (1934) 61 Cal. 324.

\* This sub-section was substituted for the old sub-s. (2) by Act XXVII of 1943, s. 2 (a).

† Burma amendment.—In Burma, there is sub-section (2A), introduced by Burma Act X of 1941, which runs as follows.—“2(A) When the witness resides in British India, the commission may be issued to any Presidency Magistrate or District Magistrate or Magistrate of the first class in British India within the local limits of whose jurisdiction such witness resides.”

‡ This sub-section was substituted for the old sub-s. (4) by Act XXVII of 1943, s. 2 (b).

in sub-section (2), he may, in lieu of proceeding in the manner laid down in sub-section (3),—

(a) delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India, or

(b) where the commission is for the examination of a witness residing in an Indian State, forward it for execution to the State Court, if any, recognised by the Crown Representative by notification in the official Gazette as a Court to which commissions may be forwarded under this sub-section, within the local limits of whose jurisdiction the witness resides.

COMMENT.—The taking of evidence on commission in criminal cases is most sparingly resorted to, i.e. in extreme cases of delay, expense, or inconvenience,<sup>1</sup> e.g., for a *pardanashin* lady<sup>2</sup> or an ailing person.<sup>3</sup>

The Court can grant a commission to examine a witness who resides in an Indian State, or in British India even within the jurisdiction of the Court.<sup>4</sup> It has no power to issue a commission to examine witnesses at Pondicherry or Mauritius.<sup>5</sup>

The terms of the section are very wide. They refer not only to an inquiry and a trial but to any other proceeding.<sup>6</sup>

1. 'Witness.'—The term includes a complainant.<sup>7</sup>

Sub-section (3).—The provisions of this sub-section are mandatory.

504. (1) If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to such Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

(1A) When a commission is issued under this section to a Chief Presidency Magistrate, he may delegate his powers and duties under the commission to any Presidency Magistrate subordinate to him.

(2) Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the Slave Trade Act, 1876, section 8.

505. (1) The parties to any proceeding under this Code in which a commission is issued, may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, [and, except in a case to which clause (b) of sub-section (4) of section 508 applies, the Magistrate]\* or officer to whom the com-

<sup>1</sup> *Basant Bibi*, (1889) 12 All. 69; *Hem Coomaree Dasse*, (1897) 24 Cal. 551.

<sup>2</sup> *Basant Bibi*, *ibid.*: *Hem Coomaree Dasse*, *ibid.*; *Abhayeswari Devi v. Kishori Mohan Banerjee*, (1914) 42 Cal. 19; but see *Hurro Soondery Chowdhraim*, (1878) 4 Cal. 20; *Din Tarini Debi*, (1888) 15 Cal. 775.

<sup>3</sup> *Jamuna Singh*, (1924) 3 Pat. 591.

<sup>4</sup> *Bal Gangadhar Tilak*, (1882) 6 Bom. 285; *Hem Coomaree Dasse*, *sup.*

<sup>5</sup> *S. Moorga Chetty*, (1881) 5 Bom. 338, F.B.

<sup>6</sup> *Abhayeswari Devi v. Kishori Mohan Banerjee*, (1914) 42 Cal. 18, 24.

<sup>7</sup> *Ibid.*

\* The words within brackets were substituted for the words "and the Magistrate" by Act XXVII of 1948, s. 3 (a) (i).

mission is directed, or to whom the duty of executing such commission has been delegated shall examine the witness upon such interrogatories.

[In a case to which clause (b) of sub-section (4) of s. 508 applies, the officer to whom the commission is issued shall forward such interrogatories to the Court to which he forwards the commission for execution].\*

(2) Any such party may appear before such Magistrate or [except in a case to which clause (b) of sub-section (4) of section 508 applies, before such officer]† by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

**506.** Whenever, in the course of an inquiry or trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

**507. (1)** After any commission issued under section 503 or section 506 has been duly executed, [or, in a case to which clause (b) of sub-section (4) of section 508 applies, has been again received by the officer by whom it was forwarded to the State Court]‡, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 83 of the Indian Evidence Act, 1872, may also be received in evidence at any subsequent stage of the case before another Court.

**COMMENT.**—Depositions taken on commission in criminal cases may be admitted under s. 83 of the Indian Evidence Act, if the requirements of the proviso to that section have been complied with.<sup>1</sup>

**508.** In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably

<sup>1</sup> *Ramchandra Govind Harshe*, (1895) 19 Bom. 749.

\* This provision was added by Act XXVII of 1948, s. 3 (a) (ii).

† The words within brackets were substituted for the word "officer" by Act XXVII of 1948, s. 3 (b).

‡ The words within brackets were added by Act XXVII of 1948, s. 4.

sufficient for the execution and return of the commission.

**508A.** The provisions of sub-section (3) of section 508, sub-sections (1) and (1A) of section 504 and so much of this chapter to sections 505 and 507 as relates to the execution of a commission and its return by the Magistrate or officer to whom the commission is directed shall apply in respect of commissions issued by a Magistrate or Court in British Burma under the law in force in British Burma relating to commissions for the examination of witnesses, as they apply to commissions issued under section 508 of section 506.\*

## CHAPTER XLI.

### SPECIAL RULES OF EVIDENCE.

**509. (1)** The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused,<sup>1</sup> or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

**Power to summon medical witness.** (2) The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

**COMMENT.**—This section allows the examination of a Civil Surgeon taken and duly attested by a Magistrate, to be given in evidence in the Court of Session. It does not in any way preclude the Sessions Judge from calling the Civil Surgeon and examining him. And this course ought to be pursued in every case in which the deposition taken by the Magistrate is essentially deficient, or requires further explanation or elucidation.

A medical man, in giving evidence, may refresh his memory by referring to a report which he has made of his post-mortem examination, but the report itself cannot be treated as evidence and no facts can be taken therefrom.<sup>1</sup>

**Scope.**—This section confines itself to expert evidence tendered by a medical witness as such. It has no application to evidence relating to facts tendered by a person who also happens to be a medical man.<sup>2</sup> The evidence must relate to matters medical only. If the prosecution seek to rely on the deposition in regard to other matters, the witness must be treated as an ordinary witness and he must be examined at the Sessions trial.<sup>3</sup>

1. 'Taken and attested....in the presence of the accused.'—This fact must either appear from the Magistrate's record or be proved by the evidence of witnesses. The presence of the accused is essential.<sup>4</sup>

<sup>1</sup> *Roghunt. Singh*, (1882) 9 Cal. 455. <sup>2</sup> *Jhubboo Mahton*, (1882) 8 Cal. 789; *Kachaki Hart*, (1890) 18 Cal. 129.

<sup>3</sup> *Waris Khan*, (1940) 15 Luck. 429.

<sup>4</sup> *Nand Singh*, [1944] Lah. 87.

\* This section was inserted by Act XXXV of 1940, s. 3.

**510.** Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

**COMMENT.**—This section applies to the report of a “Chemical Examiner or Assistant Chemical Examiner.” It does not extend to the report made by an additional Chemical Examiner,<sup>1</sup> or the Professor of Anatomy at the Government Medical College.<sup>2</sup> A report made by a municipal analyst cannot be used as evidence unless the analyst is called as a witness in order to prove that the contents of the reports are true.<sup>3</sup>

The section uses the word “may” and not “shall.” Cases may arise in which it may be necessary in the interests of justice that the Chemical Examiner be called and examined as a witness, e.g. in a matter of arsenic poisoning. It is not necessary to call the Chemical Examiner in all cases in which a chemical analysis has been made and in which the result of such analysis is a determining factor in the case.<sup>4</sup> The written report of a Chemical Examiner is entitled to as much weight as it would have, if it had been formally proved by sworn testimony. The Court may, however, call the Chemical Examiner, when this course is deemed to be necessary in the interests of justice.<sup>5</sup>

**511.** In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force—

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order, or,

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered ; together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

**COMMENT.**—This section provides a special mode in which a previous acquittal or a previous conviction may be proved. A previous acquittal can be proved by an extract from the Court record or by a certificate from the jailor, or by warrant of commitment. The previous convictions must be proved strictly and in accordance with law, and unless so proved no Court can take them into consideration.<sup>6</sup> The simplest thing to do is to obtain from the prison or from the

<sup>1</sup> *Autal Muchi*, (1884) 10 Cal. 1026.

<sup>2</sup> *Ahilya*, (1922) 24 Bom. L. R. 808, 47 Bom. 74.

<sup>3</sup> *Suleman Shamji*, (1943) 45 Bom. L. R. 895.

<sup>4</sup> *Bachcha*, (1934) 57 All. 256, disapproving *Happu*, (1933) 56 All. 228 ; *Behram Irani*, (1944) 46 Bom. L. R. 481.

<sup>5</sup> *Mussammatt Aishan Bibi*, (1938) 15 Lah. 310. The danger of allowing the written report of the Chemical Examiner to be accepted as evidence without subjecting him to cross-examination is pointed out in *Ujaghar Singh*, [1939] Lah. 206.

<sup>6</sup> *Sheikh Abdul*, (1916) 43 Cal. 1128.

Court a certified copy of the judgment in which the previous convictions are recorded.<sup>1</sup> The examination of the accused by a Magistrate in respect of those convictions is inadmissible.<sup>2</sup> In each case the identity of the accused should be proved, e.g. by finger impressions.<sup>3</sup>

**512. (1)** If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witness (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

**(2)** If it appears that an offence punishable with death or transportation has been committed by some person or persons unknown, the High Court may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of British India.

**COMMENT.**—This section deals with recording of evidence, (1) where the accused is absent and there is no immediate prospect of his arrest, and (2) where the offender is unknown. In the first case, the Court can record depositions of prosecution witnesses. These can be offered at the trial in three cases: (1) if the witness is dead; (2) if he is incapable of giving evidence; or (3) if his attendance would cause unreasonable delay, expense or inconvenience. Secondly where the offender is unknown and the offence committed is punishable with death or transportation, the High Court may direct a first class Magistrate to record prosecution evidence. Depositions so recorded may be used at the trial (1) if the witness is dead, or (2) is incapable of giving evidence, or (3) is beyond the limits of British India.

It is clear from the language of the section that the Court which records the proceedings under it must first of all record an order that in its opinion it has been proved that the accused has absconded and that there is no immediate prospect of his arrest.<sup>4</sup> Where no such order is recorded, it is enough if the Court is satisfied as to the requirements.<sup>5</sup> The Court is then bound to proceed under the section.<sup>6</sup>

Where of two persons accused of murder the principal offender absconds and pardon is tendered to the other, the evidence of the latter may be recorded under this section.<sup>7</sup>

<sup>1</sup> *Abdullah*, [1940] Kar. 83.

<sup>2</sup> *Yasin*, (1901) 28 Cal. 689, 693.

<sup>3</sup> *Abdul Hamid*, (1905) 32 Cal. 759; *Abdullah*, sup.

<sup>4</sup> *Rustom*, (1915) 38 All. 29, 31; 707.

*Ghurbin Bind*, (1884) 10 Cal. 1097;

*Ishri Singh*, (1886) 8 All. 672; *Daya*

*Ram*, (1925) 6 Lah. 489; *Manbodin*,

[1944] Nag. 511.

<sup>5</sup> *Bhagwati*, (1918) 41 All. 60;

*Daya Ram*, sup.

<sup>6</sup> *Wasudeo*, (1900) 2 Bom. L. R.

<sup>7</sup> *Dagdoo Bapu*, (1921) 46 Bom.

120, 23 Bom. L. R. 839.



## CHAPTER XLII.

## PROVISIONS AS TO BONDS.

**513.** When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of<sup>1</sup> executing such bond.

**COMMENT.**—This section permits payment of cash or Government promissory notes in substitution of passing a bond, except where the bond is one for good behaviour. This provision is salutary, and is meant to help an accused who is a stranger to the place.

1. 'In lieu of.'—This means that the deposit of cash or security is in substitution of,<sup>1</sup> and not in addition to,<sup>2</sup> the passing of a bond.

**514. (1)** Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the attachment and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(7) When any person who has furnished security under section 106 or section 118 or section 562 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 514B, a certified copy of the

<sup>1</sup> *Lazmanlal v. Mulshankar*, (1908) 32 Bom. 449, 452, 10 Bom. L. R. 553,

557.

<sup>2</sup> *Fata*, (1898) Unrep. Cr. G. 671.

judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

**COMMENT.**—This section provides procedure on forfeiture of bonds. When a bond has been forfeited, either the Court by which it was taken or the Chief Presidency Magistrate or a Magistrate of the first class, or in the case of a bond for appearance the Court before which the appearance was to be made, may satisfy itself as to forfeiture, and call upon the person bound by it either to pay the penalty or to show cause. If the penalty is not paid and no sufficient cause shown, the Court will recover the same by attachment and sale of the movable property of the person liable. The warrant may be executed within the local limits of the Court, or else within the local limits of other Courts provided it is signed by the District Magistrate or Chief Presidency Magistrate as the case may be. In default, the person may be confined in a civil jail for a period of six months. The Court has a discretion to remit a portion of the penalty. If a surety dies before the bond is forfeited his estate is discharged. Where a person is convicted of a breach of the bond taken under s. 106, 118, 562 or 514B, a certified copy of the judgment will be used as evidence in proceedings against the surety and shall be presumptive proof of his liability unless he proves the contrary.

1. 'Such Court.'—Where the bond for appearance is taken by one Court, proceedings for its breach cannot be taken by another.<sup>1</sup> Where a bond is taken for the appearance of a person in one Court, and he fails to appear in another Court to which the case has been transferred, there is no breach of the bond.<sup>2</sup> When the bond executed by a surety is an undertaking to produce an accused in a certain Court on being called upon to do so, in the absence of any notice calling upon the surety to produce the accused, it cannot be said that the surety has failed to perform the conditions of the bond or that the bond has been forfeited.<sup>3</sup> Similarly, when a bond is taken by the Bombay Police under the City Police Act, proceedings for its breach cannot be had before the Presidency Magistrate.<sup>4</sup>

2. 'To show cause.'—A Magistrate is not justified in forfeiting a recognizance unless the party charged has had an opportunity of cross-examining the witnesses upon whose evidence the rule has been issued.<sup>5</sup>

Even where the recognizance cannot be enforced against the principal on the ground that his arrest was illegal, the surety is liable to have his bond forfeited for non-appearance of the principal.<sup>6</sup> The surety cannot escape his liability merely on the ground that no immediate action is taken against him.<sup>7</sup>

Where a person who has been let out on bail commits suicide<sup>8</sup> or is arrested for another offence<sup>9</sup> the sureties are discharged from their obligation under the bond.

**Case.**—The accused who was on bail attended the Court on the day of hearing. While the question as to the cancellation of the bail-bond was being argued, the

<sup>1</sup> *Mir Husen*, (1913) 16 Bom. L. R. 84.

<sup>2</sup> *Shamsuddin Sirkar*, (1902) 30 Cal. 107; *Behari Lal Chatterjee*, (1909) 36 Cal. 749; *Ballabhdas Motiram*, (1943) 45 Bom. L. R. 314.

<sup>3</sup> *Manindra Kumar Majumdar*, [1942] 2 Cal. 468.

<sup>4</sup> *Crawford*, (1918) 42 Bom. 400, 20 Bom. L. R. 379.

<sup>5</sup> *Nobin Chunder Dutt*, (1879) 4 Cal. 865, F.B.

<sup>6</sup> *Chhajju Singh*, (1921) 2 Lah. 204; *Kashiba v. Shripat Narain*, (1894) 19 Bom. 697.

<sup>7</sup> *Raja Ram*, (1908) 26 All. 202.  
<sup>8</sup> *Vijtaraghavalu Naidu*, (1912) 37 Mad. 156; *Rama Bapu*, (1916) 18 Bom. L. R. 683.

<sup>9</sup> *Alauddin*, (1924) 4 Pat. 259.

accused took the permission of the Court to go out and offer prayers, and absconded. The surety was thereupon directed to show cause why his bond should not be forfeited and penalty enforced. He contended that his liability under the bond had ceased as he had secured the attendance of the accused in Court and that the disappearance of the accused was due to the permission of the Court in whose custody he was. It was held that the accused was either on bail or in the custody of the Court. There was no half-way house between, or any combination of, those two conditions, and until the bail bond was cancelled and the accused was taken into custody, it could not be said that, merely because he attended the Court one day, the surety ceased to be liable for that day and the Court had the custody of the accused. The bond was accordingly held liable to forfeiture and penalty enforceable.<sup>1</sup>

**514A.** When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 514, the Court, by whose order such bond was taken, or a Presidency Magistrate or Magistrate of the first class, may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and, if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

**514B.** When the person required by any Court or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

**515.** All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate, shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Power to direct  
levy of amount  
due on certain  
recognizances.

**516.** The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

## CHAPTER XLIII. OF THE DISPOSAL OF PROPERTY.

**516A.** When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

<sup>1</sup> *Muradali*, [1941] Kar. 164.

**COMMENT.**—This section enables the Courts to pass orders for the custody or disposal of property during an inquiry. The following section gives similar powers to a Court at the conclusion of an inquiry or a trial.

Where a third party appears before the Magistrate and alleges that the things seized by the police under a search warrant are his property and are not the subject of the alleged offence, the Magistrate is bound to hear that party and, if necessary, to restore the things to their owner.<sup>1</sup>

**517. (1)**—When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession<sup>1</sup> thereof or otherwise of any property or document produced before it or in its custody<sup>2</sup> or regarding which any offence appears to have been committed,<sup>3</sup> or which has been used for the commission of any offence.<sup>4</sup>

(2) When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled<sup>5</sup> thereto, such Court may direct that the order be carried into effect by the District Magistrate.

(3) When an order is made under this section such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided by sub-section (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.

**Explanation.**—In this section the term “property” includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

**COMMENT.**—The provisions of this section come into operation only on the conclusion of an inquiry or a trial in a criminal Court. They refer to four classes of property or document: (1) produced before the Court; (2) or in its custody; or (3) regarding which any offence is committed; or (4) which is used in committing any offence. Such property can be disposed of in any of the four following ways: (1) destruction; (2) confiscation; (3) delivery to person entitled to its possession; or (4) otherwise. The term “property” means not only the property in its original form but also that into which it is converted or for which it is exchanged. The order concludes the immediate right to possession, though it does not bar a civil suit to determine the question of title.<sup>2</sup>

<sup>1</sup> *Lakshman Govind Nirgude*, (1902)  
26 Bom. 552, 557, 4 Bom. L. R. 276.

<sup>2</sup> *Tribhovan Maneckchand*, (1884)  
9 Bom. 181.

The Court has power to pass an order regarding the property produced before or in custody of the Court even though no offence has been committed in respect of it.<sup>1</sup> Hence, where a person charged with theft<sup>2</sup> is discharged, the Court can award possession of the subject-matter of the alleged theft to some person other than the party in whose possession the property was found.<sup>3</sup> Where a title to seized property is doubtful, it should be returned to the person from whom it was seized, unless there are special circumstances which would render such a course unjustifiable;<sup>4</sup> or the property itself may be kept in Court,<sup>5</sup> or the property may be sold and its proceeds kept in deposit by the Court, until the question of title is settled.<sup>6</sup>

The order for disposal of property may be passed either at the conclusion of the trial or at a later date.<sup>7</sup>

1. 'Person claiming to be entitled to possession.'—This expression does not mean the owner. A person who came into possession in a lawful manner of the articles seized from his custody is therefore entitled to get them back under this section.<sup>8</sup>

2. 'Any property or document produced before it or in its custody.'—These words give power to a Court to make orders about the disposal of any property produced before it in an inquiry even without an expression of opinion on the part of the Court that any offence appears to have been committed regarding it.<sup>9</sup>

'Any property.'—These words include as well property voluntarily produced before the Magistrate by a witness in the case, as property seized by the police or found on the person of the accused.<sup>10</sup> It is immaterial how the property reached the custody of the Court. Even if the original seizure was illegal the jurisdiction to act in the circumstances set out in the section would still be there.<sup>11</sup>

The word 'property' does not include immovable property.<sup>12</sup>

3. 'Regarding which any offence appears to have been committed.'—The expression refers to cases of offences relating to property or relating to documents, e.g. where the Court directs, as in cases of theft or criminal misappropriation or offences of similar description, that the property which is stolen or misappropriated be restored to its owner.<sup>13</sup> It includes moveable property regarding the possession of which a quarrel is begun or a fight is begun whatever may be the offence that might ultimately be committed in the course of the quarrel or fight.<sup>14</sup>

4. 'Which has been used for the commission of any offence.'—These words have reference to instruments like guns or swords produced in Court: they will not include a printing press in a case of sedition,<sup>15</sup> or a boat in a case of theft.<sup>16</sup>

5. 'Deliver the property to the person entitled.'—Upon general principles where there has been an inquiry or a trial, and the accused is discharged or ac-

<sup>1</sup> *Russul Bibee v. Ahmed Moosajee*, (1906) 34 Cal. 347, 350; *Pydi Ramanna*, (1918) 42 Mad. 9.

<sup>2</sup> *Kanga Sabat*, (1910) 34 Mad. 94.

<sup>3</sup> *Srinivasamoorthi v. Narasimulu Naidu*, (1927) 50 Mad. 916.

<sup>4</sup> *Ram Khalawan Ahir v. Tulsi Telini*, (1924) 28 C. W. N. 1094.

<sup>5</sup> *Visa Santa*, (1914) 16 Bom. L. R. 951.

<sup>6</sup> *Deopujan Mahto v. Kukur Ahir*, (1939) 19 Pat. 337. Contra, *Abdul v. Ghulam Muhammad*, (1923) 4 Lah. 460.

<sup>7</sup> *Budhulal v. Sukhman*, [1942] Nag.

769.

<sup>8</sup> *Pydi Ramanna*, sup.

<sup>9</sup> *Ramdas Samaldas*, (1875) 12 B. H. C. 217.

<sup>10</sup> *Bhimji Ramji*, [1945] Nag. 413.

<sup>11</sup> *Bisnur Singh*, (1918) 18 C. W. N. 1146.

<sup>12</sup> *Abinash Chandra Bhattacharjee*, (1907) 34 Cal. 986.

<sup>13</sup> *Shaik Dawood v. Velayuda Semmanotti*, (1927) 51 Mad. 606, 608.

<sup>14</sup> *Abinash Chandra Bhattacharjee*, sup.

<sup>15</sup> *Jarip Gazi*, (1904) 3 C. W. N. 337.

quitted by any criminal Court, that Court is bound to restore the property, the subject-matter of the investigation, into the possession of the person from whom it is taken.<sup>1</sup>

**Cases.—Calf.**—Where a cow is stolen and recovered eighteen months after the theft, it can be ordered to be delivered from an innocent purchaser, but not the calf which was not in embryo at the time of the theft and was born afterwards.<sup>2</sup>

**Gold.**—A gold ornament was stolen and converted by the thief into a different ornament, which was sold to the applicant for full value. The applicant melted the ornament<sup>3</sup> and sold pieces of gold to different persons. On the trial for theft, the applicant was made to produce the amount he had paid to the thief. It was held that the money could not be treated as the property regarding which the offence was committed, and that the money should be returned to the applicant.<sup>4</sup>

**Current coin.**—Where property embezzled consists of current coin, it is not competent to the Magistrate to order re-payment of the amount by sale of the ornaments, currency notes, etc., found in possession of the accused.<sup>5</sup>

**Foreign coins.**—Babashahi coins not being current coins or legal tender in British India can be dealt with under this section.<sup>6</sup>

**Currency-note.**—The accused stole a currency-note from Government which he offered to a goldsmith as price of a gold ornament purchased by him. The goldsmith got it cashed from his neighbour (applicant) who cashed it in good faith. At the trial of the accused the note was attached from the applicant. On conviction of the accused, the note was ordered to be returned to the applicant as he had obtained good title to the currency note by mere delivery.<sup>7</sup>

**518.** In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

**519.** When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

<sup>1</sup> *Annapurnabai*, (1877) 1 Bom. 630, 632; *Ratanlal Rangildas*, (1892) 17 Bom. 748; *Devadin Durgaprasad*, (1897) 22 Bom. 844; *Khajasaheb*, (1900) 2 Bom. L. R. 763; *Bahinu*, (1902) 5 Bom. L. R. 25; *Sadashiv*, (1908) 11 Bom. L. R. 16; *Kareppa*, (1914) 17 Bom. L. R. 79; *Basudeb Surma Gossain v. Natsrudin*, (1887) 14 Cal. 885; *Surendra Nath Sarma v. Rai Mohan Das*, (1908) 30 Cal. 690.

<sup>2</sup> *Vernede*, (1886) 10 Mad. 25.

<sup>3</sup> *Anant Virupax*, (1918) 20 Bom. L. R. 604.

<sup>4</sup> *Fattah Chand*, (1897) 24 Cal. 499.

<sup>5</sup> *Mathur Lalbhai*, (1901) 25 Bom. 702, 3 Bom. L. R. 392.

<sup>6</sup> *Pandharinath Pundlik*, (1915) 40 Bom. 186, 17 Bom. L. R. 922; *Collector of Salem*, (1878) 7 M. H. C. 233; *Jaggessur Mochi*, (1878) 8 Cal. 379; *H. H. the Nizam of Hyderabad v. A. M. Jacob*, (1891) 19 Cal. 52;

**COMMENT.**—This section deals only with the money found on the person of the accused at the time of his arrest. It may be utilised in compensating an innocent purchaser of property who loses possession on conviction of the accused. This section may be compared with s. 545.

**520.** Any Court of appeal, confirmation, reference or revision<sup>1</sup> may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just.<sup>2</sup>

**COMMENT.**—1. 'Court of appeal, confirmation, reference or revision.'  
—A full bench of the Bombay High Court has held that any Court which has powers of appeal, confirmation, reference, or revision in respect of the trial Court, that being the Court subordinate thereto, can make any substantive order it thinks fit in respect of property dealt with by the trial Court under s. 517, 518, or 519.<sup>3</sup> The Chief Court of Sind has adopted this view.<sup>4</sup>

The Calcutta High Court has differed from the above view and held that an Additional Sessions Judge is a Court of appeal but not a Court of revision within the meaning of this section. The Court of appeal mentioned in this section must be a Court of appeal as contemplated by Chap. XXXI of the Code. There is nothing in the terms of this section justifying the view that the words "Court of appeal" in the section mean only a Court to which either of the parties to the criminal case has appealed or could appeal. The wording of the section rather indicates that the Court of appeal is any Court, which has powers of appeal, i.e. any Court, to which appeals would ordinarily lie from the decision of the Magistrate by whom the case was tried. The Court of revision within the meaning of this section must be a Court of revision as contemplated by Chap. XXXII of the Code. The Sessions Judge or the Additional Sessions Judge is not a Court of revision within the meaning of this section.<sup>5</sup>

A full bench of the Rangoon High Court has held that the expression 'Court of appeal, confirmation, reference or revision' has a wider meaning and is not restricted to a Court to which either of the parties to a criminal case has appealed or could appeal, or has applied for revision. Hence, either the Sessions Judge or a District Magistrate as a Court of revision has power<sup>6</sup> to interfere with the order of the trial Court passed in a case of acquittal.<sup>4</sup> According to the Allahabad High Court in a case of acquittal the appeal against an order under s. 517 lies only to the High Court.<sup>7</sup>

2. 'And make any further orders that may be just.'—This provision is meant to "enable a superior Court to give effect to an order setting aside the order of the Court of first instance, if that order has been carried out, but directing the restitution of property."<sup>8</sup>

<sup>1</sup> *Walchand v. Hari*, (1932) 56 Bom. 369, 34 Bom. L. R. 1203, F.B., overruling *Khema Rukhad*, (1918) 42 Bom. 664, 20 Bom. L. R. 395; *Thiraj*, (1928) 10 Lah. 187; *Srinivasamoorthi v. Narasimhulu Naidu*, (1927) 50 Mad. 916; *Jaggessur Mochi*, (1878) 3 Cal. 379, 381.

<sup>2</sup> *Fatima v. Sain Rakhsh*, [1941] Kar. 442.

<sup>3</sup> *Shabbapati Dobey v. Ramkishan Kumar*, (1935) 62 Cal. 861.

<sup>4</sup> *U Po Hla v. Ko Po Shein*, (1929) 7 Ran. 345, F.B.,<sup>5</sup> overruling *Maung Mra Tun v. Ma Kga Zoe Pru*, (1928) 6 Ran. 259.

<sup>6</sup> *Debi Ram*, (1924) 46 All. 623.

<sup>7</sup> *S. O. R.*; *Shwe Wa v. C. I. Mehta*, (1927) 5 Ran. 533.

**Notice.**—Notice to the opposite party should be given before passing an order under this section.<sup>1</sup>

**521. (1)** On a conviction under the Indian Penal Code, section 292, section 298, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

**522. (1)** Whenever a person is convicted<sup>1</sup> of an offence attended by criminal force or show of force or by criminal intimidation and it appears to the Court that by such force or show of force or criminal intimidation any person has been dispossessed of any immovable property, the Court may, if it thinks fit, when convicting such person or at any time within one month<sup>2</sup> from the date of the conviction, order the person dispossessed to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

(3) An order under this section may be made by any Court of appeal, confirmation, reference or revision.

**COMMENT.**—Sections 517 to 521 dealt with movable property only: this section refers to immovable property. Where a person is deprived of his possession of immovable property by (1) criminal force, or (2) show of force, or (3) criminal intimidation, he may be reinstated in possession by the Court, when convicting the dispossessor of the offence. There are two conditions precedent to the making of the order: (a) the dispossessor must be convicted; and (b) the dispossession should be under circumstances detailed in the section.<sup>3</sup> The order may be passed either at the time of the conviction or within one month of its date. It may be passed by the trial Court or by any Court of appeal, confirmation, reference or revision. The aggrieved party may resort to a civil Court to have the order set aside. Section 145 may be contrasted with this section.

It will be noted that the section says that the offence must be attended by criminal force, etc., not that criminal force, etc., must necessarily form an ingredient of the offence.<sup>4</sup> It is only when the actual use of criminal force leads to the dispossession that an order can be made.<sup>4</sup> Where the complainant himself alleged that the house was locked when the unlawful entry was effected, it could not be said that

<sup>1</sup> *Laxman Rangu*, (1911) 35 Bom. 258, 13 Bom. L. R. 181; *Arunachala Thevan*, (1922) 46 Mad. 162; *Shree Wa v. C. I. Mehta* (1927) 5 Ran. 533.

<sup>2</sup> *Ram Chandra Boral v. Jityandria*, (1897) 25 Cal. 434; *Ishan Chandra v. Dina Nath*, (1899) 27 Cal. 174; *Churaman v. Ram Lal*, (1908) 25 All. 341; *Tulshi Ram v. Abrar Ahmad*,

(1915) 37 All. 654.

<sup>3</sup> *Mohini Mohan Chowdhry v. Harendra Chandra Chowdhry*, (1904) 31 Cal. 691, 696, F.S.

<sup>4</sup> *Narayan v. Visaji*, (1898) 23 Bom. 494; *Batakala Pottavodu*, (1902) 26 Mad. 49; *Ishan Chandra v. Dina Nath*, sup.; *Teja Singh*, (1927) 9 Lah. 322.



the offence of criminal trespass was attended by criminal force or show of force or by criminal intimidation within the meaning of this section.<sup>1</sup> Where a person is dispossessed of his immovable property in his absence, the offence committed by the accused is not attended by criminal force or show of force within the meaning of this section and the person dispossessed cannot be restored to the possession of his property, under the provisions of this section.<sup>2</sup>

1. 'Whenever a person is convicted.'—The phrase does not mean that the order about the possession of land must be made simultaneously with the conviction of the offence. This order is an independent order, and all that the section contemplates is that the order can only be made on conviction of the offence.<sup>3</sup>

2. 'Within one month.'—Any order made after one month is without jurisdiction.<sup>4</sup>

Sub-section (3).—This sub-section does not impose any time limit as in sub-section (1) within which a Court of appeal, confirmation, reference or revision must act.<sup>5</sup> Where an order for restoration of possession of immovable property was passed by a Magistrate more than one month after the conviction of the accused under s. 447 of the Penal Code, the High Court set aside the order and itself passed an order for the restoration of possession.<sup>6</sup>

523.\* (1) The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

<sup>1</sup> *Ram Chand*, [1939] Lah. 513.

<sup>2</sup> *Narain Singh*, [1941] Lah. 512; *Narayana v. Muneppa*, [1943] Mad. 900.

<sup>3</sup> *Narayan v. Visaji*, (1898) 23 Bom. 494, 499.

<sup>4</sup> *Ashwintikumar Das v. Shashankamohan Basu*, (1932) 59 Cal. 1153.

<sup>5</sup> *Fida Hussain v. Sarfaraz Hussain*, (1933) 12 Pat. 787; *Nandoo*, [1938] Nag. 454.

<sup>6</sup> *Nihal Singh*, [1939] All. 893.

\* **Burma amendment.**—In Burma, the following proviso was added to sub-section (1) by Act XI of 1941—

"Provided that any police officer, who has made a seizure of cattle, paddy, or rice or of a boat or any other bulky article, may, pending the order of the Magistrate, deliver such cattle or article to any person who may appear to be entitled to the possession of such cattle or article on his executing a bond with or without sureties to return or produce such cattle or article at a police-station whenever required."

**COMMENT.**—Under this section what the Magistrate has to consider is, who is entitled to the possession of property which has been seized by the police. Where it is proved that the person from whose possession the property was seized came by it dishonestly, the Magistrate may have to consider questions of title in order to determine the best right to possession. But where it appears that the police have seized property from a person who is not shown to have committed any offence in relation to that property, the Magistrate can only hold that that person is entitled to possession of the property.<sup>1</sup>

This section deals with three classes of property come to by the police: (1) property found on search of arrested person under s. 51; (2) property alleged or suspected to have been stolen; and (3) property suspected to have been connected with an offence. The seizure must be reported to the Magistrate. The Magistrate is entitled to do one of three things: (a) he may pass an order regarding the disposal of the property; or (b) deliver it to the person entitled to its possession subject to conditions, if any, imposed; or (c) in his absence pass an order for its custody and production. In the last-mentioned case, the Magistrate may issue a proclamation requiring its owner to appear and establish his claim within six months. If no claimant so appears, the property may be placed either at the disposal of Government or be sold (s. 525). Where the property is subject to speedy and natural decay, and the owner is absent or unknown, or if its sale is more beneficial to its owner, or if its value is less than ten rupees, it may be sold immediately (s. 525).

Section 523 needs to be distinguished from s. 517. The latter applies to all property produced before a Court in an inquiry or trial under a search-warrant issued by itself, while s. 523 applies to property not so produced, but still in the possession of the police who had seized it of their own motion, in the exercise of powers conferred on them by law, e.g. s. 51, 54, 165 or 166.<sup>2</sup> When one property is sent on to a Magistrate with a charge-sheet it is removed from the provisions of this section, and the Magistrate must then act under s. 517.<sup>3</sup>

The discretion given by the section must be judicially exercised. In the absence of anything to show the title to the property, it should be ordered to be delivered to the person in whose possession it had been at the time of attachment.<sup>4</sup> The Magistrate does not decide the question of title, but merely decides the question of possession.<sup>5</sup> The real owner can assert his right in the civil Court.<sup>6</sup>

**Sub-section (2).**—This sub-section provides for an inquiry only in the case where the person entitled to possession of property is unknown.<sup>7</sup>

**524. (1)** If no person within such period establishes his claim to such property, and if the person in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Provincial Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Provincial Government in this behalf.

<sup>1</sup> *Lakshmi Chand v. Gopikisan*, (1935) 38 Bom. L. R. 117, 60 Bom. 183.

<sup>2</sup> *Ratanlal Rangikrish*, (1892) 17 Bom. 748, 751. See, however, *Lakshman Govind Nirgude*, (1902) 26 Bom. 552, 4 Bom. L. R. 276.

<sup>3</sup> *Kuppammal*, (1906) 20 Mad. 375, 377.

<sup>4</sup> *Bahinu*, (1902) 5 Bom. L. R. 25; *Kareppa*, (1914) 17 Bom. L. R. 79; *Babu Ram*, (1941) 17 Luck. 430.

<sup>5</sup> *Hussensha v. Mashaksha*, (1910) 12 Bom. L. R. 232.

<sup>6</sup> *Tribhuvan Manekchand*, (1884) 9 Bom. 131, 134.

<sup>7</sup> *Sullemann*, [1942] Kar. 72.

(2)\* In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

**525.** If the person entitled to the possession of such property is unknown or absent and the property is subject to perishable speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than ten rupees the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

## CHAPTER XLIV.

### OF THE TRANSFER OF CRIMINAL CASES.

THIS Chapter refers to four classes of transfer: (1) Section 526 covers any inquiry or trial and the transfer may be by High Court to any other Court of equal or superior jurisdiction including the High Court itself. (2) Under s. 526A the High Court may, on the application of the Advocate General, transfer any case under s. 41(a) of the Army Act to itself; (3) the Provincial Government can, under s. 527, transfer any case from one province to another; (4) under s. 528 a Sessions Judge may transfer to himself any case made over by him to an Assistant Sessions Judge; and, similarly, a Chief Presidency Magistrate, District or Sub-divisional Magistrate may recall a case made over by him to a subordinate Magistrate and may either try it himself or transfer it to another Magistrate subordinate to him.

The power to transfer a pending case from one Court to another appertains to the High Court also under s. 225 of the Government of India Act, 1935, and cl. 29 of the Letters Patent. The Code also contains other provisions dealing with transfer of cases, e.g. ss. 178, 191, 192, 346, 407 (2), 487 and 556. The Bombay High Court transferred to itself a case pending in the Court of the Resident at Aden,<sup>1</sup> and transferred a case pending before one police patel to another.<sup>2</sup>

**526. (1)** Whenever it is made to appear to the High Court:—

High Court may (a) that a fair and impartial inquiry or trial transfer case or cannot be had in any Criminal Court subordinate itself try it. thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(d) that an order under this section will tend to the general convenience of the parties or witnesses, or

(e) that such an order is expedient for the ends of justice, or is required by any provision of this Code; it may order—

<sup>1</sup> *Comley*, (1904) 7 Bom. L. R. 104.

<sup>2</sup> *Doyal Kanji*, (1908) 10 Bom. L. R. 630.

(i) that any offence be inquired into or tried by any Court not empowered under sections 177, to 184 (both inclusive), but in other respects competent to inquire into or try such offence ;

(ii) that any particular case<sup>1</sup> or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction ;<sup>2</sup>

(iii) that any particular case or appeal be transferred to and tried before itself ; or

(iv) that an accused person be committed for trial to itself or to a Court of Session.

(2) When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if so ordered, pay any amount which the High Court may under this section award by way of compensation to the person opposing the application.

(6) Every accused person making any such application shall give Notice to Public Prosecutor of application under this section. to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made ; and no order shall be made on the merits of the application unless, at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6A) Where any application for the exercise of the power conferred by this section is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding two hundred and fifty rupees as it may consider proper in the circumstances of the case.

(7) Nothing in this section shall be deemed to affect any order made under section 197.

(8) If in any inquiry under Chapter VIII or Chapter XVIII or in Adjournment on any trial,<sup>3</sup> any party interested intimates to the Court, application under at any stage before the defence closes its case that this section. • he intends to make an application under this section, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees, that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon :

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or, where an adjournment under this sub-section has already been obtained by one of several accused,\* upon a subsequent intimation by any other accused.

(9) Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it.

*Explanation.*—Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under section 844.

(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon.

**COMMENT.**—This section contains an important provision of law, and one that is frequently resorted to. It can be brought into action in any of three ways :—

- (1) The High Court can act *suo motu* ;
- (2) the lower Court may apply ; or
- (3) the party may apply,

only when one or more of the following five conditions are fulfilled :—

- (a) a fair and impartial inquiry or trial cannot be had ;
- (b) some question of law of unusual difficulty is likely to arise ;
- (c) a view of the scene of offence is necessary ;
- (d) it will tend to the general convenience of the parties or witnesses ;
- (e) it is expedient for the ends of justice.

It is the High Court alone that has jurisdiction to transfer a case under the section. It may pass any of the following four orders :—

- (i) that any offence be inquired into or tried by a Court otherwise competent though not empowered under ss. 177 to 184 ;
- (ii) that any case or appeal be transferred to another criminal Court of equal or superior jurisdiction ;
- (iii) that any case or appeal be transferred to itself ; or
- (iv) that an accused person be committed for trial to a Court of Session or to itself.

\* The High Court may order the applicant to execute a bond for the costs of the opponent ; and if the application is frivolous or vexatious, the costs of the opponent may be ordered to be paid by the applicant.

The application for transfer should be supported by an affidavit ; and the Public Prosecutor is entitled to have notice of it at least twenty-four hours ahead.

As soon as the applicant notifies the trial Court of his intention to move the High Court for transfer, the trial Court is bound to stay the proceedings ; but it is not obligatory on the Court of Session to do so, if the Court is of opinion that

the applicant is guilty of laches. In an application for transfer the Court should furnish the applicant with a copy of any report which the Court may receive from the subordinate Court from which it is sought to transfer the case.<sup>1</sup>

The Madras High Court has held that the order for transfer must operate from the date on which that order is passed and therefore any Court which continues to do any act after the order is passed—even though a copy of the order has not been received by it—is acting without jurisdiction. A case pending before a Bench of Magistrates was ordered to be transferred to the Court of Stationary Sub-Magistrate. Before, however, that order had been communicated to the Bench Magistrate's Court, the case came up before the Bench and on the accused's plea he was convicted and sentenced. It was held that the Bench Court, when it took up the case of the accused and disposed of it, had no jurisdiction to do so.<sup>2</sup> In a full bench case the Lahore High Court has held that an order staying further proceedings in the lower Court on an application for transfer under this section, can only be deemed to take effect when it is communicated to the lower Court concerned and is not operative immediately it is made by the High Court so as to render null and void any proceedings taken between its making and its communication to the lower Court.<sup>3</sup>

Sub-section (1).—Clause (a).—As a rule the High Court is reluctant to interfere under the section. It demands the postulation of exceptional reasons before it elects to stand in the way of the progress of a pending trial. Yet in acting under cl. (a) what is required is not whether in fact “a fair and impartial inquiry or trial” cannot be had, but whether there is “a reasonable apprehension” in the mind of the party about it. “Of course it is not every apprehension of this sort that should be taken into consideration; but where the apprehension is of a reasonable character, there, notwithstanding that there may be no real bias in the matter, the fact of incidents having taken place calculated to raise such reasonable apprehension ought to be a ground for allowing a transfer.”<sup>4</sup> “The law has regard not so much perhaps to the motives which might be supposed to bias the judge as to the susceptibilities of the litigating parties.”<sup>5</sup> The fact that the trying Magistrate is the master of the complainant,<sup>6</sup> or is subordinate to the District Magistrate who has sanctioned the prosecution,<sup>7</sup> is no ground for a transfer. But the fact that the Magistrate has, in a counter case brought by the accused on the same facts, prejudiced the guilt of the accused,<sup>8</sup> or that the Magistrate has made up his mind regarding a case,<sup>9</sup> or that he has interested himself by obtaining a settlement by the parties,<sup>10</sup> or that he has examined witnesses for the complainant after nine o'clock at night in contravention of High Court Circular,<sup>11</sup> or who is subordinate as a revenue officer to

<sup>1</sup> *Damodar Padwal*, (1930) 33 Bom. L. R. 311.

<sup>2</sup> *Borai Goudar v. Commissioner, Ootacamund Municipality*, [1938] Mad. 1003.

<sup>3</sup> *Mahommod Hussain*, [1943] Lah. 331, F.B.

<sup>4</sup> *Dupeyron v. Driver*, (1896) 23 Cal. 495, 498; *Legal Remembrancer v. Bhairab Chandra Chuckerbutty*, (1897) 25 Cal. 727; *Baktu Singh v. Kali Prasad*, (1900) 28 Cal. 297; *Kali Charan Ghose*, (1906) 33 Cal. 1183; *Pandurang Govind*, (1900) 2 Bom. L. R. 755, 25 Bom. 179; *Farzand Ali v. Hanuman Prasad*, (1896) 19 All. 64; *Ram Kishan Das*, (1912) 35 All. 5; *Jaggan*, (1914) 36 All. 239; *Amar Singh v. Sadhu Singh*, (1925)

6 Lah. 396; *Faqir Singh*, (1928) 10 Lah. 223; *Sikandar Lal Puri*, (1928) 10 Lah. 778.

<sup>5</sup> Per Lush, J., in *Serjeant v. Dale*, (1877) 2 Q. B. D. 558, 567.

<sup>6</sup> *Basapa*, (1884) 9 Bom. 172.

<sup>7</sup> *Sorabji Rustumji*, (1941) 43 Bom. L. R. 518.

<sup>8</sup> *Rangasami Goundan*, (1906) 30 Mad. 238; *Sinnai Goundan*, (1897) 20 Mad. 388.

<sup>9</sup> *Harischandra*, (1907) 10 Bom. L. R. 201.

<sup>10</sup> *Muzaffar Husain v. Muhammad Yaqub*, (1925) 47 All. 411.

<sup>11</sup> *Shamshad Ali Khan v. Mohammad Amin Khan*, (1932) 14 Lah. 201.

the Mamlatdar on whose report the case is instituted,<sup>1</sup> is a sufficient ground.

If good grounds for a transfer are made out, the Court ought not to refuse it merely because the case has reached an advanced stage or because the transfer may entail expense and trouble to all concerned.<sup>2</sup>

**Clause (11)—1. 'Case.'**—This term means a case which is pending before a Court of competent jurisdiction to receive and try it.<sup>3</sup> It does not include a transfer application,<sup>4</sup> or a proceeding under s. 145;<sup>5</sup> Proceedings under Chapter VIII and XVIII are included in the term.

**2. 'Equal...jurisdiction.'**—The High Court can transfer a case from the file of the Chief Presidency Magistrate to that of another Presidency Magistrate.<sup>6</sup>

**Sub-section (6A).**—The word person includes Provincial Government, and therefore the Provincial Government opposing the application is entitled to recover its costs.<sup>7</sup>

**Sub-section (8).**—A Magistrate is bound to postpone the hearing of a case for the purpose of enabling a party to apply to a High Court for a transfer,<sup>8</sup> and his refusal to do so renders the subsequent proceedings voidable,<sup>9</sup> if not void.<sup>10</sup> In passing orders the Magistrate has no power to direct the petitioner to pay the costs of the day to the prosecution.<sup>11</sup>

**3. 'Inquiry...or in any trial.'**—These words are intended to apply to those inquiries or trials which are specially referred to in the earlier portion of the Code.<sup>12</sup>

According to the Madras High Court a "trial" is over before the judgment is pronounced, and the pronouncing of judgment is no part of the trial.<sup>13</sup> The Calcutta High Court has held that the word 'trial' includes the judgment, and the refusal by a Magistrate to grant an adjournment notice of transfer after the close of the cases of both sides but before the arguments are heard and the judgment is delivered, on the ground that the trial is at an end, is erroneous.<sup>14</sup> The Lahore High Court has held that the intimation which is contemplated under this sub-section must be made before the close of the defence. Where an application of transfer was made after the judgment had been written and signed but was to be pronounced by the Magistrate's successor, it was held that as soon as the Magistrate had signed the judgment he had delivered it within the meaning of s. 360(3) and the trial was over.<sup>15</sup>

**4. 'Accused.'**—The word "accused" in the proviso to this sub-section applies to the accused as a whole. If, therefore, adjournments for transfer are already granted on the application of some of the accused, the Court is not bound to grant further adjournment on the application of the remaining accused who had not

<sup>1</sup> *Adambhai Abdullahai*, (1942) 44 Bom. L. R. 763.

<sup>2</sup> *Sikandar Lal Puri*, (1928) 10 Lah. 778.

<sup>3</sup> *Mangal Tekchand*, (1886) 10 Bom. 274, following *Peary Lal Mozoomdar v. Komal Kishore Dassia*, (1880) 6 Cal. 30.

<sup>4</sup> *Muhammad Sharif v. Rai Hari Prasad Lal*, (1925) 5 Pat. 229.

<sup>5</sup> *Loka Mahlon v. Kali Singh*, (1927) 6 Pat. 553.

<sup>6</sup> *Venkateswara Sastri*, (1911) 35 Mad. 739.

<sup>7</sup> *Kanwer Sen*, (1929) 52 All. 263, F.B.

<sup>8</sup> *Chitranti Lal*, (1927) 9 Lah. 537;

*Gayitri Prasunno Ghosal*, (1888) 15 Cal. 455. But see *Virasami*, (1896) 19 Mad. 375, 379.

<sup>9</sup> *Kali Charan Ghose*, (1906) 33 Cal. 1183, 1187.

<sup>10</sup> *Surat Lal Chowdhry*, (1902) 29 Cal. 211.

<sup>11</sup> *Venkatarama Chetti*, [1942] Mad. 661.

<sup>12</sup> *Muhammad Sharif v. Rai Hari Prasad Lal*, sup.

<sup>13</sup> *Public Prosecutor v. Chockalinga Ambalam*, (1928) 52 Mad. 855, 857.

<sup>14</sup> *Niyamat Sha*, (1931) 59 Cal. 478.

<sup>15</sup> *Gian Singh v. Amar Singh*, [1938] Lah. 567.

joined in the prior applications of the other accused.<sup>1</sup>

**Affidavit.**—An accused person is competent to make an affidavit in support of his application for transfer.<sup>2</sup>

**Re-transfer.**—Where a High Court transfers a case from a Court subordinate to a District Magistrate to the Court of a District Magistrate, the latter is expected to try the case himself unless the order of transfer permits him to re-transfer the case to a Magistrate subordinate to him. Where, however, a case is transferred from the Court of one District Magistrate to that of another the latter can transfer the case to any Magistrate subordinate to him and competent to try it.<sup>3</sup>

**526A. (1)** Where any person subject to the Naval Discipline Act (other than a person to whom that Act applies by virtue of the Indian Navy (Discipline) Act, 1934) or to the Army Act or to the Air Force Act is accused of any offence such as is referred to in proviso (a) to section 41 of the Army Act, the Advocate General shall, if so instructed by the competent authority, apply to the High Court for the committal or transfer of the case to the High Court and thereupon the High Court shall order that the case be committed for trial to or be transferred to itself and shall thereafter proceed to try the case by jury.

(2) The Central Government may, by notification in the Official Gazette, declare any officer to be the competent authority for the purpose of issuing instructions under sub-section (1) in regard to any class of cases specified in the notification.

**527. (1)** The Provincial Government may, by notification in the Official Gazette, direct the transfer of any particular case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court, to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to it that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses :

Provided that no case or appeal shall be transferred to a High Court or other Court in another Province without the consent of the Provincial Government of that Province.

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

**Sessions Judge**  
may withdraw  
cases from Assistant Sessions Judge.

**528. (1)** Any Sessions Judge may withdraw any case from, or recall any case which he has made over to, any Assistant Sessions Judge subordinate to him.

(2) Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial

<sup>1</sup> *Peshari Lal*, (1931) 12 Lah. 668.    <sup>2</sup> 163; *Subbaya*, (1889) 12 Mad. 451.  
<sup>3</sup> *Ghulam Muhammad*, (1922) 3 Lah.    <sup>4</sup> *Mata Prasad*, (1897) 19 All. 249;  
46. See, contra, *Matan*, (1910) 33 All.    *Govind Sahai*, (1914) 37 All. 20.



to any other such Magistrate competent to inquire into or try the same.

Power to authorize District Magistrate to withdraw classes of cases.

(3) The Provincial Government may authorize the District Magistrate to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

(4) Any Magistrate may recall any case made over by him under section 192, sub-section (2), to any other Magistrate and may inquire into or try such case himself.

(5) A Magistrate making an order under this section shall record in writing his reasons for making the same.

(6) The head of a village under the Madras Village-police Regulation, 1816, or the Madras Village-police Regulation, 1821, is a Magistrate for the purposes of this section.

COMMENT.—The powers given by this section are very large, and for the very reason they should be most carefully exercised. Magistrates of the District should use the extensive discretion given them to divert the course of procedure from its ordinary channel, only when it is absolutely necessary for the interests of justice that they should do so.<sup>1</sup>

When a case is once transferred by a Sub-divisional Magistrate, it is not open to the District Magistrate to re-transfer it ;<sup>2</sup> though he can transfer a case which the Sub-divisional Magistrate has previously refused to transfer.<sup>3</sup> Where a District Magistrate transfers a case to a Magistrate subordinate to him and also subordinate to the Sub-divisional Magistrate, it is not competent to the Sub-divisional Magistrate to re-transfer the case to his own file.<sup>4</sup>

Sub-section (2).—It is not incumbent that a party should go first to the Chief Presidency Magistrate under this sub-section before applying to the High Court for a transfer of the case under s. 526.<sup>5</sup>

Sub-section (5).—An order of transfer, without notice to the complainant<sup>6</sup> or the accused<sup>7</sup> and without record of reasons, is not illegal but merely irregular and not invalid.

Notice.—It is imperative that notice must be given to the other side before a transfer is ordered.<sup>8</sup>

## CHAPTER XLIVA.

### SUPPLEMENTARY PROVISIONS RELATING TO EUROPEAN AND INDIAN BRITISH SUBJECTS, AND OTHERS.

THERE were at first special provisions for the trial of European and American offenders in the Code. A committee was appointed to abolish racial distinction. On the recommendations made by the Committee, the racial distinctions have been largely removed. The subject is dealt with in Chapter XXXIII, which applies

<sup>1</sup> *Umrao Singh v. Fakir Chand*, (1881) 8 All. 740, 751.

<sup>2</sup> *Raghunatha Pandaram*, (1902) 26 Mad. 130.

<sup>3</sup> *Santhappa Sethuran v. Govindaswamy Kandiyar*, (1916) 40 Mad. 791.

<sup>4</sup> *Sheikh Muhammad Akbar*, (1924) 47 All. 288.

<sup>5</sup> *Shandasani (No. 2)*, (1930) 32 Bom. L. R. 1128, 54 Bom. 558.

<sup>6</sup> *Chotamiya v. Asrafmiya*, [1936] Nag. 87.

<sup>7</sup> *Kamni Begam*, [1938] All. 738.

<sup>8</sup> *Umrao Singh v. Fakir Chand*, sup.; *Teacotta Shekdar*, (1882) 8 Cal. 393; *Sadashio*, (1896) 23 Bom. 549; *Hawaji Sakharam*, (1918) 21 Bom. L. R. 276. But see *Bagh Ali v. Muhammad Din*, (1925) 6 Lah. 541; *Govinda Swain*, (1922) 2 Pat. 353.

to places outside presidency-towns. That Chapter places European and Indian British subjects on a par, and contains detailed provisions for their trial. The present Chapter contains provisions supplementary to those that have gone before. It applies to European and Indian British subjects in presidency-towns, and to Europeans (other than European British subjects) or Americans throughout British India. The status of the accused has to be asserted and proved before the Magistrate. If the Magistrate rejects the claim and commits the accused to the Court of Session, the claim can be repeated before the latter Court. If the Magistrate rejects the claim and proceeds to try the case himself, the claim can form a ground of appeal if the trial ends in conviction (s. 528A). If such a person does not make the claim as to his status, it is deemed to have been waived (s. 528B). If a person not possessing a special status is treated and tried as having the status the trial is not on that account invalid (s. 528C). Except as provided in the Code, all Acts conferring jurisdiction on Magistrates and Courts to try offenders shall be meant to refer also to persons of the status described in this Chapter (s. 528D).

There are other provisions in the Code which refer specially to European British subjects. No Magistrate of the second or third class can try them for offences punishable otherwise than with fine not exceeding Rs. 50 (s. 29A). Similarly, no other Magistrate of the first class or District Magistrate can pass on them sentences other than imprisonment extending to two years or fine up to Rs. 1,000 or both; and no Court of Session can pass any sentence other than death, penal servitude, imprisonment, fine, or both (s. 34A).

The constitution of jurors or assessors is special in this class of case. In the case of a trial by jury of a European or an Indian British subject, a majority of the jurors shall be Europeans and Americans or Indians, if it is demanded before the first juror is called. Where a European (other than European British subject) or an American is concerned, a majority of the jurors shall be Europeans or Americans (ss. 275 and 326). Similarly, where the trial is by assessors, the accused can demand that all the assessors shall be members of this or their own status (s. 284A). Where persons of the above different communities are put up together jointly, they may be tried jointly; but if they object, they can be tried separately (s. 285A).

There is one more provision in favour of European British subjects. Any High Court established by Letters Patent can exercise powers under s. 491 in their case within such territories, over and above the limits of its appellate criminal jurisdiction, as the Central Government may direct (s. 491A).

To sum up, there are three distinct kinds of claims dealt with in these Chapters. First, a claim to be dealt with according to the provisions of Chapter XXXIII; secondly, a claim to be dealt with under ss. 528A, 528B; and, thirdly, a further claim to be tried by a majority of his own people as jurors under s. 275 or by assessors of his own people under s. 284A.<sup>1</sup> Under this Chapter the accused may claim the status of a European British subject with a view to a limited sentence or with a view to the right, conferred by s. 275, of claiming a European majority on the jury.<sup>2</sup>

**528A. (1)** Where, in any case to which the provisions of Chapter XXXIII do not apply, any person claims to be dealt with as an European or Indian British subject, or where any person claims to be dealt with as an European (other than an European British subject) or an American, he shall state the grounds of such claim to the Magistrate before whom he is brought for the

Procedure of claim of a person to be dealt with as, European or Indian British subject, or as, European or American.

<sup>1</sup> *Harendra Chandra Chakravarty*, (1924) 51 Cal. 980.

<sup>2</sup> *Martindale*, (1924) 52 Cal. 347, 358.

purpose of the inquiry or trial ; and such Magistrate shall inquire into the truth of such statement and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject or an Indian British subject, or an European or an American, as the case may be, and shall deal with him accordingly.

(2) When any such claim is rejected by the Magistrate and the person by whom it was made is committed by the Magistrate for trial before the Court of Session, and such person repeats the claim before such Court, such Court shall, after such further inquiry, if any, as it thinks fit, decide the claim, and shall deal with such person accordingly.

(3) When any Court before which any person is tried rejects any such claim as aforesaid the decision shall form a ground of appeal from the sentence or order passed in such trial.

**COMMENT.**—Sub-section (1).—This sub-section expressly takes cases, to which Chapter XXXIII applies, out of its scope. It provides that such a claim must be put forward by the claimant stating the grounds of such claim to the Magistrate before whom he is brought for the purpose of the inquiry or trial, and also lays down that such Magistrate shall hold an inquiry and decide whether the claimant has established his status, and shall deal with him accordingly. Broadly stated, this sub-section is applicable to all cases before all Magistrates either in presidency-towns or in the mufassal, to which the special provisions of Chapter XXXIII do not apply.<sup>1</sup> The claim must, however, be made before the trial or inquiry has actually commenced.<sup>2</sup> • •

**Sub-section (2).**—This sub-section contemplates such cases only in which the Magistrate commits the claimant for trial to the Court of Session after rejection of the claim, in which cases the claimant, whose claim has been rejected by the Magistrate and who has thereafter been committed to the Court of Session, may repeat his claim there, and the said Court shall, after such further inquiry, if any, as it thinks fit, decide the claim and shall deal with such person accordingly.<sup>3</sup>

**Sub-section (3).**—This sub-section applies to all Courts in which trials (not inquiries) are held of the claimant after rejection of his claim, and it states that the decision on such claim shall form a ground of appeal from the sentence or order passed in such trial.<sup>4</sup>

**528B.** If in any such case an European or Indian British subject or an European (other than an European British subject) or an American does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before and rejected by the committing Magistrate, it is not repeated before the Court to which such person is committed, he shall be held to have relinquished his right to be dealt with as an European British subject or an Indian British subject, or an European or an American, as the case may be, and shall not assert it in any subsequent stage of the case.

Failure to plead  
status a waiver.

<sup>1</sup> *Harendra Chandra Chakravarty*,  
(1924) 51 Cal. 980, 988.

<sup>2</sup> *Carmen v. O'Brien*, (1927) 54 Cal.  
1041.

<sup>3</sup> *Harendra Chandra Chakravarty*,  
sup.

<sup>4</sup> *Ibid.*

**COMMENT.**—This section deals with the case of a person whose case has reached either the appellate stage or the trial in the Court to which he has been committed.<sup>1</sup>

The Calcutta High Court has held that it is not precluded from dealing in revision with the case of a European British subject convicted by a Court on the ground that he did not claim to be dealt with as a European British subject by the Magistrate before whom he was tried.<sup>2</sup> The Bombay High Court has held to the contrary.<sup>3</sup> And so has the Madras High Court.<sup>4</sup>

**528C.** Where a person, not being an European British subject, is dealt with as an European British subject or, not being an Indian British subject, is dealt with as an Indian British subject or, not being an European (other than an European British subject) or American, is dealt with as an European or American, and such person does not object, the inquiry, commitment, trial, or sentence, as the case may be, shall not, by reason of such dealing, be invalid.

**528D. (1)** Unless there is something repugnant in the context, all enactments made by the Central Legislature which confer on Magistrates or on the Court of Session jurisdiction over offences shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein.

**(2)** Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this Code as to the amount of punishment which it may inflict on an European British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of such subjects.

## CHAPTER XLV.

### OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

**529.** If any Magistrate not empowered by law to do any of the following things, namely :—

- (a) to issue a search-warrant under section 98 ;
- (b) to order, under section 155, the police to investigate an offence ;
- (c) to hold an inquest under section 176 ;
- (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;
- (e) to take cognizance of an offence under section 190, sub-section (1), clause (a) or clause (b) ;
- (f) to transfer a case under section 192 ;

<sup>1</sup> *Carmen v. O'Brien*, (1927) 54 Cal. 1041.

<sup>2</sup> *H. G. Bolton*, (1932) 60 Cal. 676.

<sup>3</sup> *Grant*, (1888) 12 Bom. 561.

<sup>4</sup> *Babington*, [1937] Mad. 339.

- (g) to tender a pardon under section 387 or section 388 ;
  - (h) to sell property under section 524 or section 525 ; or
  - (i) to withdraw a case and try it himself under section 528 ;
- erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

**COMMENT.**—This section cures nine kinds of irregularities, provided they are caused erroneously and in good faith. A further qualification is implied, though it is not expressly stated in the section, viz. they should not occasion a failure of justice.<sup>1</sup> The section deals with acts done by a Magistrate in no way empowered by law to do those acts : it has no reference to a Magistrate empowered otherwise under the Act to do an act but not possessing jurisdiction over the offence.<sup>2</sup>

Clause (f).—Transfer of a case.<sup>3</sup>

Clause (g).—Tender of pardon.<sup>4</sup>

Irregularities  
which vitiate pro-  
ceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely :—

- (a) attaches and sells property under section 88 ;
  - (b) issues a search-warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department ;
  - (c) demands security to keep the peace ;
  - (d) demands security for good behaviour ;
  - (e) discharges a person lawfully bound to be of good behaviour ;
  - (f) cancels a bond to keep the peace ;
  - (g) makes an order under section 188 as to a local nuisance ;
  - (h) prohibits, under section 143, the repetition or continuance of a public nuisance ;
  - (i) issues an order under section 144 ;
  - (j) makes an order under Chapter XII ;
  - (k) takes cognizance, under s. 190, sub-section (1), clause (c), of an offence ;
  - (l) passes a sentence, under section 349, on proceedings recorded by another Magistrate ;
  - (m) calls, under section 485, for proceedings ;
  - (n) makes an order for maintenance ;
  - (o) revises, under section 515, an order passed under section 514 ;
  - (p) tries an offender ;
  - (q) tries an offender summarily ; or
  - (r) decides an appeal ;
- his proceedings shall be void.

**COMMENT.**—This section enumerates eighteen kinds of irregularities which render proceedings void. No question of error or good faith arises here. In other words, they are illegalities which vitiate the proceedings. Such proceedings have no existence in point of law : they need not be set aside by a superior Court.<sup>5</sup> This means, the Magistrate has no initial jurisdiction to try.

<sup>1</sup> *Lalit Chandra Chanda Chowdhury*, (1909) 36 Cal. 369 ; *Baby Hasanali*, (1911) 30 Cal. 119, 127. <sup>2</sup> (1928) 30 Bom. L. R. 653.

<sup>3</sup> *Chidda*, (1897) 20 All. 40, 41.

<sup>4</sup> *Chidda*, sup.

<sup>5</sup> *Kishori Lal Roy v. Srinath Roy*, (1884) 8 Bom. (1908) 36 Cal. 370 ; *Dasarath Rai*, 307 ; *Abdul Ghani*, (1902) 29 Cal. 412.

Clause (j).—This clause refers to a case where a Magistrate is not competent, by virtue of the position he holds or powers vested in him, to try a case of the character referred to in s. 145.<sup>1</sup>

**531.** No finding, sentence or order<sup>1</sup> of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area,<sup>2</sup> unless it appears that such error has in fact occasioned a failure of justice.

**COMMENT.**—The object of ss. 531 to 533 is to uphold in most cases the orders passed by criminal Courts which lacked local jurisdiction or which had committed illegalities or irregularities unless failure of justice has been occasioned or is likely to be occasioned thereby.<sup>3</sup>

It will be observed that the key-note of this and the following sections is "failure of justice."<sup>4</sup> Section 532 refers to personal disability irrespective of the area of jurisdiction.

This section applies solely to cases in which there is no jurisdiction by reason of the inquiry, trial or other proceeding being held in the wrong local area; but the following section seems to refer to cases in which the Magistrate is competent to deal with the offences as having taken place within the local limits of his jurisdiction, but has no power to commit them to the High Court or Court of Session either because he is only a second class Magistrate or for some reason other than that of local jurisdiction.<sup>4</sup> Sections 177, 179, 180, 181 and 183 should be read with this section. The manifest intention of this section is to provide against the contingency of a finding, sentence or order, regularly passed by a Court in the case of an offence committed outside its local area, being set aside when no failure of justice has taken place.<sup>4</sup>

1. 'Order.'—That is, for example, an order of a Magistrate committing a case to the Court of Session.<sup>4</sup>

2. 'Sessions division, district, sub-division or other local area' means those to which the Criminal Procedure Code applies. They have no reference to local area, etc., in a foreign country or in a portion of the British Empire to which the Code has no application.<sup>7</sup>

**Cases.**—Where an appeal was presented at the right place but was heard by the presiding Judge at a place where he had no criminal jurisdiction, the irregularity was cured under this section.<sup>8</sup> A commitment made by a Magistrate having no local jurisdiction to a Sessions Court which also has no jurisdiction is bad; and cannot be cured by the transfer of the case to a Court having jurisdiction.<sup>9</sup>

<sup>1</sup> *Raj Mohan Roy Chowdhury v. Prasunno Chandra Chatterji*, (1901) 5 C. W. N. 686.

<sup>2</sup> *Acharaja Singh*, (1936) 15 Pat. 418; *Fazal Azim*, (1894) 17 All. 32, 38, F.B.; *Husen Abdul Rahiman*, (1913) 16 Bom. L. R. 84.

<sup>3</sup> *Ganapathy Chetty*, (1919) 42 Mad. 791, 793; *Lalit Chandra Chanda Chowdhury*, (1911) 39 Cal. 110, 127; *Birju Marwari*, (1921) 44 All. 157, 159.

<sup>4</sup> *James Ingle*, (1891) 16 Bom. 200; *Atmaram*, (1900) 2 Bom. L. R. 394; *Rayan Kutti*, (1903) 26 Mad. 640, 643.

<sup>5</sup> *Doraiswamy Mudali*, (1906) 30 Mad. 94, 95.

<sup>6</sup> *Thaku*, (1884) 8 Bom. 312; *James Ingle*, sup.; *Atmaram*, sup.; *Ram Dei*, (1896) 18 All. 350.

<sup>7</sup> *Bichitranund Dass v. Bhugbut Perai*, (1880) 10 Cal. 667, 676.

<sup>8</sup> *Fazal Azim*, sup.

<sup>9</sup> *Assistant Sessions Judge, North Arcot v. Ramammal*, (1911) 36 Mad. 387. But, see *Ganapathy Chetty*, (1919) 42 Mad. 791, where such a commitment to the High Court Sessions was held good. See also *Ram Dei*, sup.

When irregular commitments may be validated.

**532. (1)** If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits as accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

(2) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate.

**COMMENT.**—A commitment made by a qualified Magistrate (s. 206) can be quashed by the High Court alone, and only on a point of law (s. 215).<sup>1</sup> A commitment made by an unqualified Magistrate will be accepted, except on two grounds : (1) that the accused has been injured thereby, (2) that the accused had objected to the jurisdiction of the Magistrate before the order of commitment was made.<sup>2</sup> Under any of these two circumstances, the commitment will be quashed and a fresh inquiry directed before a competent Magistrate.

When a trial is once had upon such a commitment, it cannot be attacked in appeal from the result of the trial.<sup>3</sup>

**533. (1)** If any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded ; and, notwithstanding anything contained in the Indian Evidence Act, 1872, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Courts of Appeal, Reference and Revision.

**COMMENT.**—Owing to the extremely delicate nature of statements and confessions, the law has deliberately hedged salutary safeguards (ss. 164 and 364) round them. Non-observance of those requirements may result in having the statements or confessions ruled out of evidence. This section has, however, been enacted in order that technicalities may not succeed in defeating the ends of justice.

This section cures the irregularity where a confession is made in one language and recorded in another.<sup>4</sup>

<sup>1</sup> *Madhav Laxman*, (1918) 20 Bom. L. R. 607, 43 Bom. 147.

<sup>2</sup> *A Morton*, (1884) 9 Bom. 288, 296; *James Ingle*, (1891) 16 Bom. 200; *Abbi Reddi*, (1894) 17 Mad. 402; *B. G. Tilak*, (1898) 22 Bom. 112.

<sup>3</sup> *Dilan Singh*, (1912) 40 Cal. 360; *Nga Wa Gyi*, (1925) 3 Ran. 55.

<sup>4</sup> *Deo Dat*, (1922) 45 All. 166; *Visram Babaji*, (1896) 21 Bom. 495; *Raghu*, (1898) 23 Bom. 221; *Lalchand*, (1891) 18 Cal. 549; *Sagal Samba Sajao*, (1898) 21 Cal. 642. See, contra, *Nil-madhuv Mitter*, (1888) 15 Cal. 595, F.B.; *Viran*, (1888) 9 Mad. 224.

Omission to give information under section 447.

**534.** An omission to inform under section 447 any person of his rights under Chapter XXXIII shall not affect the validity of any proceeding.

Effect of omission to prepare charge.

**535. (1)** No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

**(2)** If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommended from the point immediately after the framing of the charge.

**COMMENT.**—Omission to frame a charge (s. 210 or 254) will be a ground for a re-trial, if it has occasioned a failure of justice.<sup>1</sup> The phrase “merely on the ground that no charge was framed” means a case where the offence being a petty one and the evidence being fairly taken, the Court framed no charge at all.<sup>2</sup>

Trial by jury of offence triable with assessors.

**536. (1)** If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

**(2)** If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

**COMMENT.**—This section covers two kinds of irregularities in the mode of trial. If a case triable with the aid of assessors is tried by a jury, then the accused is not damnified because he gets the privilege of a better form of trial.<sup>3</sup> But the accused does not thereby get a right to appeal on facts.<sup>4</sup> In a later case the Calcutta High Court has held that an appeal will lie on a matter of fact as well.<sup>5</sup>

Where, however, the reverse is the case, the accused has the right to object, provided his objection is taken before the Court records its finding.<sup>6</sup> A trial which ought to have been held entirely with the aid of a jury but was held in part with the aid of assessors is not illegal, if no objection to the procedure was taken in the trial Court.<sup>7</sup> The Court can, in a case tried with the aid of assessors, convict the accused of a minor offence though it were triable by a jury.<sup>8</sup>

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

**537.** Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction<sup>1</sup> shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

<sup>1</sup> *Gurdu*, (1880) 3 All. 129; *Madhab Chandra Saha*, (1926) 53 Cal. 738.

<sup>2</sup> *Sita Akht*, (1912) 40 Cal. 168, 171.

<sup>3</sup> *Jeyram Haribhai*, (1899) 23 Bom. 696, 1 Bom. L. R. 114; *Mawing*, (1909) 33 Bom. 423, 11 Bom. L. R. 350; *Surja Kurmi*, (1898) 25 Cal. 555.

<sup>4</sup> *Parbhushankar*, (1901) 25 Bom. 680, 3 Bom. L. R. 279, F.B.; *Ekkabbar Mandal*, [1937] 2 Cal. 815. See, contra, *Mohim Chunder Rai*, (1878) 3 Cal.

765; see also the differing judgments of Benson and Bhashyam Ayyangar, J.J., in *Pattikadan Ummaru*, (1902) 28 Mad. 243.

<sup>5</sup> *Golak Biharee Takal*, [1938] 1 Cal. 290.

<sup>6</sup> *Ganapathi Vannianar*, (1900) 28 Mad. 632; *Sakhawat*, [1937] Nag. 277.

<sup>7</sup> *Sakhawat*, *ibid.*

<sup>8</sup> *Changouda*, (1920) 22 Bom. L. R. 1241, 45 Bom. 619.



(a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(b) [Omitted by s. 184 of Act XVIII of 1923.]

(c) of the omission to revise any list of jurors or assessors in accordance with section 824, or

(d) of any misdirection in any charge to a jury unless such error, omission, irregularity, or misdirection has in fact occasioned a failure of justice.<sup>a</sup>

*Explanation.*—In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

[Illustration. Omitted by s. 148 of Act XVIII of 1923.]

**COMMENT.**—This section applies to a case where something irregular takes place at a regular trial. It does not apply where the trial is illegal from start to finish. There are always chances for honest errors or harmless omissions or innocent irregularities to creep in any trial or proceeding. These are quite innocuous, if they do not occasion “a failure of justice” as a matter of fact. They are here classified into three categories: (1) error, omission or irregularity in any step of a trial, inquiry or proceeding; (2) omission to revise the list of jurors or assessors; and (3) misdirection in a charge to a jury. They do not enable a Court of confirmation or appeal or revision to interfere with any finding, sentence or order. To put it shortly, a mere irregularity in procedure is not ordinarily sufficient to avoid a trial. It should, however, only be “one of form and not of substance.”<sup>1</sup>

The disobedience, however, to an express provision as to a mode of trial cannot be classed as a mere irregularity. “The remedying of mere irregularities is familiar in most systems of jurisprudence, but it would be an extraordinary extension of such a branch of administering the criminal law to say that when the Code positively enacts that such a trial... shall not be permitted that this contravention of the Code comes within the description of error, omission, or irregularity.”<sup>2</sup> “There is a distinction between a case in which the trial itself is contrary to law, in which event it is no trial at all under the Code, and a case in which the trial is one within the jurisdiction of the Magistrate and irregularities occur in the method of conducting it. In the latter case the provisions of section 537 are applicable and the finding can only be reversed if the irregularity has in fact occasioned a failure of justice.”<sup>3</sup> It is not a universal rule that omission to comply with an express or mandatory provision of the Code must always vitiate the trial irrespective of any question of prejudice to the accused or other party. The impugned procedure must be one that is not only prohibited by the Code but also works an actual injustice to the accused.<sup>4</sup>

1. ‘A Court of competent jurisdiction.’—These words must be taken to mean “a Court of competent jurisdiction in respect of the particular offence charged.”<sup>5</sup>

<sup>1</sup> *Appa Subhana Mendre*, (1884) 8 Bom. 200, 211.

16 Pat. 97.

<sup>2</sup> Per Lord Halsbury, L. C., in *Subramania Iyer*, (1901) 3 Bom. L. R. 540, 541, 28 I. A. 257, 263, 25 Mad. 61.

<sup>3</sup> *Alimahomed v. Kasturchand*, (1938) 41 Bom. L. R. 90.

<sup>4</sup> *Ramaraja Tevan*, (1930) 53 Mad. 987.

<sup>5</sup> *Tribhovandas*, (1903) 28 Bom. 533, 537, 4 Bom. L. R. 271.

<sup>6</sup> *Krishnabhai*, (1865) 10 Bom. 319; *Sudhama Upadhyay*, (1895) 23 Cal. 323.

<sup>7</sup> *Sukhdeo Prasad Tiwari*, (1936)

2. 'Unless such error, omission, irregularity, or misdirection has in fact occasioned a failure of justice.'—The Privy Council has ruled in *Abdul Rahman's case*<sup>1</sup> that this proviso qualifies each of the three clauses, which precede it and not merely cl. (d), though it is printed in the Government Act as if it applies to the last clause only. It has expressly laid down that the bare fact of an omission or irregularity unaccompanied by any probable suggestion of any failure of justice having been thereby occasioned, is not enough to quash a conviction, which may be supported by the curative provisions of s. 535 and this section.

No serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused.<sup>2</sup>

**Irregularity.**—In the following cases the irregularity was held curable under this section:—The failure to examine the complainant on oath;<sup>3</sup> the omission to record any relevant facts observed by a Magistrate at a local inspection under s. 559B;<sup>4</sup> the omission to pronounce the judgment before convicting and sentencing;<sup>5</sup> the pronouncing of a sentence before writing a judgment;<sup>6</sup> the omission to sign and date a judgment at the time of pronouncing it in open Court;<sup>7</sup> the reading of evidence taken in one case into another companion case;<sup>8</sup> or the omission by the Judge to read and explain to the jury the relevant sections of the law where it has not occasioned a failure of justice.<sup>9</sup>

**Illegality.**—Cases where irregularity, etc., was held to amount to illegality vitiating the trial: misjoinder of charges;<sup>10</sup> the refusal by a Magistrate to issue processes to witnesses named by the accused, when such refusal is not based on grounds mentioned in s. 257;<sup>11</sup> a summary trial for an offence which is not triable summarily;<sup>12</sup> the reception of evidence by the Sessions Judge after the discharge of assessors;<sup>13</sup> the omission to call upon an accused to enter on his defence;<sup>14</sup> the putting of questions to an accused of the nature of cross-examination before taking of evidence for the prosecution;<sup>15</sup> the omission to examine an accused under s. 342;<sup>16</sup> the examination of witnesses in the absence of the accused.<sup>17</sup>

Attachment not illegal, person making same not trespasser for defect or want of form in proceedings relating thereto.

538. No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of attachment or other proceedings

<sup>1</sup> (1926) 54 I. A. 96, 5 Ran. 53, 29 Bom. L. R. 818.

<sup>2</sup> *Abdul Rahman*, (1926) 54 I. A. 96, 5 Ran. 53, 29 Bom. L. R. 818.

<sup>3</sup> *Aparao*, (1918) 20 Bom. L. R. 1018.

<sup>4</sup> *Khushal Jeram*, (1926) 50 Bom. 480, 28 Bom. L. R. 1026; *Forbes v. Ali Haidar Khan*, (1925) 53 Cal. 46. See, contra, *Hriday Govind Sur*, (1924) 52 Cal. 148; *Jowala Singh*, (1928) 10 Lah. 188.

<sup>5</sup> *Kamakshamma*, (1913) 38 Mad. 406, 409.

<sup>6</sup> *Tilak Chandra Sarkar v. Baisagomoff*, (1896) 23 Cal. 503; *Dhondha Kandoo v. Sitaran*, (1933) 55 All. 886.

<sup>7</sup> *Mahomed Hayat Mulla*, (1929) 7 Ran. 370.

<sup>8</sup> *Sukhai Ahir*, (1927) 50 All. 457.

<sup>9</sup> *Jhina Soma*, (1930) 41 Bom. L. R. 965.

<sup>10</sup> *Chintaman*, (1945) 24 Pat. 309.

<sup>11</sup> *Narayana Mudaly*, (1907) 31 Mad. 181.

<sup>12</sup> *Mahanand Kherajmal*, [1940] Kar. 123.

<sup>13</sup> *Ram Lal*, (1898) 15 All. 136.

<sup>14</sup> *Imam Ali Khan*, (1895) 28 Cal. 252.

<sup>15</sup> *Hawthorne*, (1891) 18 All. 345.

<sup>16</sup> *Fernandez*, (1920) 22 Bom. L. R. 1040, 45 Bom. 673; *Gulabjan*, (1921) 23 Bom. L. R. 1203, 40 Bom. 411; *Madura Mulhu Vannian*, (1922) 45 Mad. 820.

<sup>17</sup> *Bigan Singh*, (1927) 6 Pat. 691.

## CHAPTER XLVI.

## MISCELLANEOUS.

**539.** Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

**539A. (1)** When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

An affidavit to be used before any Court other than a High Court under this section may be sworn or affirmed in the manner prescribed in section 589, or before any Magistrate.

Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable grounds to believe to be true, and, in the latter case, the deponent shall clearly state the grounds of such belief.

**(2)** The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

**COMMENT.**—This section applies to any person who chooses to make allegations respecting a public servant and in support of those allegations swears an affidavit. There is nothing to show that the section does not apply to an accused person, and if he swears a false affidavit he is liable to be prosecuted for perjury.<sup>1</sup>

**539B. (1)** Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

**(2)** Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost.

Provided that, in the case of a trial by jury or with the aid of assessors, the Judge shall not act under this section unless such jury or assessors are also allowed a view under section 298.

<sup>1</sup> *Badri Prasad v. Jhamman*, (1932) All. 635.  
55 All. 114; *Mahtab Singh*, [1941]

**COMMENT.**—Any Judge or Magistrate may, at any stage of any inquiry or trial, visit and inspect any place connected with the occurrence, subject to his recording a note of his inspection.<sup>1</sup> The object of a local inspection is to allow the Magistrate properly to appreciate the evidence given at the inquiry or trial and not for the purpose of the Magistrate becoming the principal witness in the case on a question of fact.<sup>2</sup>

The omission to place on the record the memorandum of a local inspection is not an illegality, but merely an irregularity,<sup>3</sup> which does not vitiate the whole proceedings unless it has occasioned a failure of justice by prejudicing the accused.<sup>4</sup>

**540.** Any Court may, at any stage<sup>1</sup> of any inquiry, trial or other proceeding under this Code, summon any person as a witness,<sup>2</sup> or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

**COMMENT.**—The scope of this section is very wide. It enables any Court at any stage of any inquiry, trial or other proceeding under the Code to do one of three things: (1) to summon any person as a witness; (2) to examine any person who is in attendance though not summoned; or (3) to recall and re-examine any person already examined. So far the section is permissive. But where the evidence of any person appears to be essential to the just decision of the case, it is obligatory on the Court to summon and examine or re-call and re-examine him.<sup>5</sup> The section applies to witnesses for the prosecution as also to those of the defence. It is not confined to Court witnesses.<sup>6</sup>

1. 'At any stage.'—These words would include the stage reached when evidence on both sides has been taken and the case is adjourned for judgment.<sup>7</sup>

2. 'Any person as a witness.'—This phrase will not include the accused.<sup>8</sup> A Magistrate is competent to summon any person as a Court witness at any stage of the proceedings, but he should inform the parties beforehand of the names of such witnesses, so as to afford them an opportunity of proper cross-examination.<sup>9</sup>

The Madras High Court has held that where a prosecution witness has turned hostile in the committing Magistrate's Court, the Public Prosecutor cannot be compelled to examine him in the Sessions Court, but he should see that the witness is present in the Sessions Court so that the Judge may examine him if he is an important witness.<sup>10</sup> The Bombay High Court has held that if the Public Prosecutor

<sup>1</sup> S. O. R.

<sup>2</sup> *Jowala Singh*, (1928) 10 Lah. 138.

<sup>3</sup> *Forbes v. Ali Haidar Khan*, (1925) 53 Cal. 46, and *Khushal*, (1926) 50 Bom. 680, 28 Bom. L. R. 1026, which dissent from *Hriday Govind Pur*, (1924) 52 Cal. 148; *Jowala Singh*, sup.; *Jamna Prasad*, [1940] Nag. 188.

<sup>4</sup> *Raghunandan Prasad*, (1931) 53 All. 706; *Rai G'odar Mal v. Hardeo Timari*, (1930) 53 All. 215.

<sup>5</sup> *Rameswarai Rai*, (1901) 6 C. W.

N. 98; *Maung Po Hmyin*, (1923) 1 Ran. 308; *P. A. Pakir Mohamed*, (1926) 4 Ran. 106; *Narayana*, [1942] Mad. 494; *Sarfraz Ali*, (1941) 17 Luck. 20.

<sup>6</sup> *Hansraj*, [1942] Nag. 333.

<sup>7</sup> *Ananda Chunder Singh v. Basu Mudh*, (1896) 24 Cal. 167; *Gopal Lall Seal v. Manick Lall Seal*, (1897) 24 Cal. 238.

<sup>8</sup> *Subbappa*, (1899) 12 Mad. 451.

<sup>9</sup> *Udho Ram*, (1928) 10 Lah. 790.

<sup>10</sup> *Guruswami*, [1942] Mad. 77.

knows of a witness who favours the accused, it is his duty either to call the witness himself or to see that the defence is supplied with the name of the witness and given an opportunity of calling him.<sup>1</sup> The Public Prosecutor should, in a capital case, place before the Court the testimony of all the available eye-witnesses though they give different accounts. He should not refuse to examine in the Sessions Court a witness who had been declared hostile before the committing Magistrate.<sup>2</sup>

**Cross-examination.**—The prosecution as well as the defence have a full right to cross-examine a witness called by the Court.<sup>3</sup> The Court cannot restrict the cross-examination to the subjects on which it had examined the witness.<sup>4</sup>

**540A. (1)** At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

**COMMENT.**—This section is designed to meet a practical difficulty which is occasionally experienced in trials involving a large number of accused persons when one or more of them is or are incapable of remaining at the bar.<sup>5</sup>

**Scope.**—The section deals with a multiplicity of accused some of whom are present in Court while others are not. It does not deal with the case where all the accused are not present or where the single accused in the case is not able to be present in Court during inquiry or trial.

**Sub-section (1).**—It provides for the case of an accused who is represented by a pleader, and whose personal attendance can be dispensed with.

**Sub-section (2).**—It provides for the case of an accused who is not represented by a pleader, or whose continued personal attendance may be necessary, and allows the Court in such a case either to adjourn the trial of all the accused, or to order the particular accused to be tried separately.<sup>6</sup>

**541. (1)** Unless when otherwise provided by any law for the time being in force, the Provincial Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

<sup>1</sup> *Vasudeo Gagle*, (1932) 34 Bom. L. R. 571, 56 Bom. 434; *Ram Ranjan Roy*, (1914) 42 Cal. 422.

<sup>2</sup> *Sarfaraz Ali*, (1941) 17 Luck. 20.

<sup>3</sup> *Pita*, (1924) 47 All. 147; *Mohendra Nath Das Gupta*, (1902) 29 Cal.

387.

<sup>4</sup> *Chintamon Singh*, (1907) 35 Cal. 248.

<sup>5</sup> S. O. R.

<sup>6</sup> R. S. C.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

(3) When a person is removed to a criminal jail under sub-section (2), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure.

**COMMENT.**—The power of the Provincial Government to take action under sub-section (1) is restricted to those rare cases where no provision has yet been made (as may happen, e.g. in a newly acquired territory or newly constituted district) for the confinement of unconvicted or convicted prisoners.<sup>1</sup> It can come into operation only when there is no other law providing for the custody in question. It empowers the Provincial Government to prescribe a place for the confinement of the person mentioned therein, and it cannot be invoked for the purpose of prescribing the custody in which he is to be kept.<sup>2</sup>

**542. (1)** Notwithstanding anything contained in the Prisoner's Testimony Act 1869, any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

**543.** When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Interpreter to be bound to interpret truthfully.

**544.** Subject to any rules made by the Provincial Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Expenses of complainants and witnesses.

<sup>1</sup> *Kundan Lal*, (1931) 12 Lah. 604.

<sup>2</sup> *Khairati Ram*, (1931) 12 Lah. 635.

**545. (1)** Whenever under any law in force for the time being a Criminal Court imposes a fine<sup>1</sup> or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

- (a) in defraying expenses properly incurred in the prosecution ;
- (b) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court ;
- (c) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

**COMMENT.**—Under this section an order of compensation can be passed by the trial Court, appellate Court or a Court in revision, at the time of passing judgment, out of the fine imposed, in three cases :—

- (a) to the complainant, for meeting expenses properly incurred in the prosecution ;
- (b) to any person, who has suffered loss or injury by the offence, when he can recover substantial compensation in a civil Court ;
- (c) to a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or disposing of stolen property, and which is ordered to be restored to its rightful owner.

The section must be taken to exclude those expenses in regard to which the Court has no discretion, *e.g.* payment of Court and process fees,<sup>1</sup> *cf.* s. 519 which deals with money found on the person of the accused.

1. 'Fine.'—The imposition of fine is a condition precedent to making an order under this section.<sup>2</sup> Compensation can be allowed only "out of any fine levied from the accused."<sup>3</sup> It cannot be awarded in addition to the fine imposed.<sup>4</sup>

Clause (a).—This clause extends only to expenses properly incurred by the complainant in the prosecution.

Clause (b).—Any person is entitled to compensation for the loss or injury caused by the offence, and includes the "wife, husband, parent and child" of the deceased victim.<sup>5</sup> The contrary view taken by the Madras High Court seems to be overruled.<sup>6</sup>

<sup>1</sup> *Yamana Rao*, (1900) 24 Mad. 305, 307.

<sup>2</sup> *Bastoo Dumeji*, (1898) 22 Bom. 717.

<sup>3</sup> *Yamana Rao*, *sup.*

<sup>4</sup> *Dhanji*, (1884) Unrep. Cr. C. 196 ; *Tukaram Sadashiv*, (1902) 4 Bom.

L. R. 877 ; *Rajubhai Chandbhai*, (1908) 5 Bom. L. R. 126 ; *Bhujanga*, (1908)

5 Bom. L. R. 976.

<sup>5</sup> *Morgan*, (1909) 36 Cal. 302.

<sup>6</sup> *Yalla Gangudu v. Mamidi Datt*, (1897) 21 Mad. 74, *re.*

Payments to be taken into account in subsequent suit.

Order of payment of certain fees paid by complainant in non-cognizable cases.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

546A. (1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant—

(a) the fee (if any) paid on the petition of complaint, or for the examination of the complainant, and

(b) any fees paid by the complainant for serving processes on his witnesses or on the accused, and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an Appellate Court, or by the High Court, when exercising its powers of revision.

COMMENT.—This section may be compared with s. 545 (1) (a) which is wider and refers to “expenses properly incurred in the prosecution.” It deals only with “fees” paid on complaint or for serving processes on witnesses or accused. The order under both is discretionary. Under s. 545 compensation is paid out of the fine levied, under this section it is in addition to the fine.

This section refers to non-cognizable offences. Compensation is to be paid in addition to fine. The fees recoverable are those paid on complaint, or for examination of the complainant, or process fees for complainant's witnesses, or process served on the accused, though the award of such fees is discretionary with the Court.

547. Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for shall be recoverable as if it were a fine.

548. If any person affected by a judgment or order<sup>1</sup> passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record he shall, on applying for such copy, be furnished therewith:

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

COMMENT.—Under this section a party has *prima facie* an implied right to ask the presiding Magistrate or Judge to allow him inspection of the record referred to in the section. The right to a certified copy pre-supposes a right of inspection, because a party cannot be expected to make up his mind whether he wants to have a copy of a document, if he is not entitled in the first place to read it, and see what it is about.<sup>1</sup>

<sup>1</sup>This section is controlled by rules made under s. 554.

1. ‘Any person affected by a judgment or order.’—According to the Bombay High Court any member of the public is not a person so affected and is not

<sup>1</sup> *Shamdasani v. Sir Hugh Cocke*, Bom. 71. (1941) 48 Bom. L. R. 961, [1942]



entitled to such copy.<sup>1</sup> But the Allahabad High Court has taken a different view and held that any member of the public has a right to obtain a copy of a judgment of any criminal Court.<sup>2</sup>

**549. (1)** The Central Government may make rules consistent with this Code and the Army Act, the Naval Discipline Act and that Act as modified by the Indian Navy (Discipline) Act, 1984, and the Air Force Act and any similar law for the time being in force as to the cases in which persons subject to military, naval, or air force law shall be tried by a Court to which this Code applies, or by Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies, or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps, ship or detachment, to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by Court-martial.

**(2)** Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

**550.** Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.

**551.** Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

**552.** Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of sixteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

**COMMENT.**—Where a woman or a female child under sixteen years has been abducted or unlawfully detained for an unlawful purpose, a District Magistrate or Presidency Magistrate may restore the woman to her liberty or the female child

<sup>1</sup> *Pandurao Desai*, (1982) 34 Bom. L. R. 1445.

<sup>2</sup> *Ladli Prasad Zutshi*, (1981) 53 All. 724.

to her proper custody. Necessary force may be used in carrying out the order. Both the detention and the purpose must be unlawful. The exclusion of male children goes to show not only that some definite purpose, unlawful in itself, was contemplated, but that the purpose had some special reference to the sex of the person against whom it was entertained.<sup>1</sup>

Section 100 may be compared with this section. The former can be put into operation by "a Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate" and refers to "any person confined" wrongfully. This section enables only a Presidency or District Magistrate to act, in cases of "abduction or unlawful detention of a woman, or of a female child under the age of sixteen years, for any unlawful purpose."

Section 491 also bears some affinity to this section. The former can be set into motion only by a High Court, but the powers conferred are much wider. It refers to "any person" or to "a person illegally or improperly detained in public or private custody."

553. (1) Whenever any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

Power of chartered High Courts to make rules for inspection of records of subordinate Courts.

Power of other High Courts to make rules for other purposes.

554. (1) With the previous sanction of the Provincial Government, any High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

(2) Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Provincial Government,—

(a) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

<sup>1</sup> *Abraham v. Mahitabo*, (1889) 18 Cal. 487, 502; *Thakordas v. Bhagvandas*, (1902) 4 Bom. L. R. 609.

(c) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it; and

(d) make rules for regulating the execution of warrants issued under this Code for the levy of fines :

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the official Gazette.

**555.** Subject to the power conferred by section 554, and by section 224 of the Government of India Act, 1935, the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

**556.** No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case<sup>1</sup> to or in which he is a party, or personally interested,<sup>2</sup> and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

*Explanation.*—A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

#### ILLUSTRATION.

A, as Collector, upon consideration of information furnished to him, directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.

**COMMENT.**—The principle underlying this section is embodied in the saying : "No person can be a judge in his own cause." The disqualification consists in being either (1) a party to, or (2) personally interested in, a case ; but it can be cured by obtaining beforehand permission of the superior Court. The thing prohibited is either holding a trial or committal proceedings, or hearing an appeal from his own order. It is one of the oldest and plainest rules of justice and of commonsense that no man shall sit as Judge in a case in which he has a substantial interest.<sup>1</sup> No Judge can act in any matter in which he has any pecuniary interest, nor where he has an interest, though not a pecuniary one, sufficient to create a real bias.<sup>2</sup> The reason of the rule is, that a person who, by his interest, pecuniary or personal, likely to have a bias in the matter of the prosecution, ought not to sit as a Judge.<sup>3</sup>

<sup>1</sup> *Bholanath Sen*, (1876) 2 Cal. 28, (1894) 19 Bom. 608, 610.

<sup>2</sup> *Wood v. Corporation of the Town of Calcutta*, (1891) 7 Cal. 522, 527.

<sup>3</sup> *Aloo Nathu v. Gagubha Dipsangji*,

Further, no Judge or Magistrate, except a High Court Judge, can try an offence referred to in s. 195, when it is committed (1) before himself, or (2) in contempt of his authority, or (3) is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding. The only exceptions are offences provided for in ss. 480 and 485 (s. 487).

**Scope.**—The provisions of the Code are not applicable to summary proceedings taken for punishing a contempt, and therefore, this section does not apply because proceedings for punishing contempt are taken not with a view to protect the Court as a whole or the individual Judges of the Court from a repetition of the attack but with a view to protect the public and specially those who either voluntarily or by compulsion are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the Court be undermined or impaired. The gravamen is an endeavour to shake the confidence of the public in the Court.<sup>1</sup>

1. 'Trial any case.'—The phrase includes the hearing of an appeal.<sup>2</sup>

2. 'Party, or personally interested.'—The phrase "party, or personally interested" is a wide one and includes all cases where the judgment is likely to be biased or is calculated to inspire no confidence in the parties. There are, however, three exceptions, viz. (1) where the person is a Municipal Commissioner; (2) where he is concerned in a public capacity; or (3) where he has either (a) viewed the scene of offence or other material place, or (b) made an inquiry in connection with the case.

The word "interested" does not imply mere intellectual interest, but something of the nature of an expectation of an advantage to be gained or of a loss or some disadvantage to be avoided, by the person who is said to be interested in the case.<sup>3</sup> The phrase "personally interested" does not mean merely "privately interested" or "interested as a private individual," but includes an interest taken by the Magistrate in initiating and directing the whole proceedings.<sup>4</sup> The phrase cannot refer to any very remote interest in the matter, and must refer to some particular and immediate personal interest in the case and its results.<sup>5</sup> It is not a mere interest in a case or in the circumstances of a case which disqualifies a Magistrate or a Judge from trying a case but that which disqualifies him must be a substantial interest giving rise to a real bias and not merely to a possibility of a bias.<sup>6</sup> Pecuniary interest even to a small extent (e.g. a share in a joint stock company) is a sufficient disqualification independently of the question whether there really is bias or no.<sup>7</sup> The law does not measure the amount of interest which a Judge possesses. If he has any legal interest in the decision of the question one way he is disqualified, no matter how small the interest may be. The law, in laying down this strict rule, has regard not so much perhaps to the motives which might be supposed to bias the Judge as to the susceptibilities of the litigant parties. One important object, at all events, is to clear away everything which might engender suspicion and distrust of the tribunal, and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security.<sup>8</sup>

<sup>1</sup> *K. L. Gauba*, [1942] Lah. 411, F.B.  
<sup>2</sup> *Nistarini Deb v. Ghose*, (1895) 23 Cal. 44.  
<sup>3</sup> *Chelappa*, (1906) 8 Bom. L. R. 947, 949.  
<sup>4</sup> *Girish Chunder Ghose*, (1898) 20 Cal. 857, 865.  
<sup>5</sup> *Ganesht*, (1898) 15 All. 192, 194, F.B.; *Narain Singh*, (1900) 22 All. 840; *Rodrigues*, (1895) 20 Bom. 502, 504.  
<sup>6</sup> *Maung Po Kywe*, [1889] Ran. 251.  
<sup>7</sup> *Shamdasani*, (1929) 31 Bom. L. R. 925, 53 Bom. 716.  
<sup>8</sup> *Serjeant v. Dale*, (1877) 2 Q. B. D. 553, 557.

**Explanation.**—Under the explanation a Magistrate or a Judge who is merely concerned with a case by reason of his discharging some other public function or being concerned with it in some public capacity is not on that ground alone to be deemed to be personally interested. The Explanation does not apply when the Magistrate himself has directed the prosecution.<sup>1</sup>

**Disqualification.**—In the following cases the Magistrate was disqualified from trying a case :—Where a Magistrate initiated and directed the proceedings, dispersed the unlawful assembly and collected the evidence ;<sup>2</sup> where a Magistrate directed investigations of the police preliminary to a trial ;<sup>3</sup> where a Magistrate was the chairman of the Municipal Committee concerned with the prosecution ;<sup>4</sup> where a Magistrate was a shareholder of the prosecuting or the accused company ;<sup>5</sup> where a Magistrate was a servant of the complainant ;<sup>6</sup> where a Magistrate was himself one of those obstructed by the driving of the accused on the wrong side of a road ;<sup>7</sup> where a Magistrate found the accused committing an offence in his presence and had the accused arrested ;<sup>8</sup> where a Magistrate was a witness in the case ;<sup>10</sup> and where a District Magistrate, who, as Inspector of Factories, ordered an inquiry to be made and in the same capacity sanctioned the prosecution.<sup>11</sup>

**No disqualification.**—In the following cases the Magistrate was not disqualified from trying the case :—Where the Magistrate was the master of the complainant ;<sup>12</sup> where the Magistrate was in charge of the opium administration of a district ;<sup>13</sup> where he held a preliminary inquiry under s. 202 ;<sup>14</sup> where he was a member of a sub-committee of a Municipal Board which recommended the prosecution of the accused for obstruction caused by him in a public thoroughfare ;<sup>15</sup> where a District Magistrate, who as Collector was representative of the Court of Wards, tried a case in which the Court of Wards was interested ;<sup>16</sup> and where a Magistrate, who had two cross-cases of riot pending before him, on the trial of the first case, expressed opinion to some extent unfavourable to the accused in the second case.<sup>17</sup>

**Practising pleader not to sit as Magistrate in certain Courts.**

**557.** No pleader who practises in the Court of any Magistrate in a presidency-town or district, shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court.

**COMMENT.**—The section means that a pleader cannot both be a Magistrate and act as a pleader in the same Court at the same time. There is no objection to a pleader practising in a Court being appointed as a Magistrate in such Court provided he gives up his practice while he is on the bench.<sup>18</sup>

<sup>1</sup> *Gundo*, (1921) 23 Bom. L. R. 842; *Mudkaya*, (1926) 28 Bom. L. R. 1302; *Muhammad Bakhsh*, (1928) 10 Lah. 718.

<sup>2</sup> *Girish Chunder Ghose*, (1898) 20 Cal. 857.

<sup>3</sup> *Sudhama Upadhyaya*, (1895) 23 Cal. 328.

<sup>4</sup> *Kharak Chand Pal v. Tarack Chunder Gupta*, (1884) 10 Cal. 1030; *Nistarini Debi v. Ghose*, (1895) 23 Cal. 44; *Pherozshah Pestonji*, (1893) 18 Bom. 442; *Bisheshwar Bhattacharya*, (1910) 32 All. 635.

<sup>5</sup> *Rodrigues*, (1895) 20 Bom. 502.

<sup>6</sup> *Shamdasani*, (1929) 31 Bom. L. R. 925, 53 Bom. 716.

<sup>7</sup> *Wood v. Corporation of the Town*

*of Calcutta*, (1881) 7 Cal. 323.

<sup>8</sup> *Lahana*, (1887) Unrep. Cr. C. 321.

<sup>9</sup> *Venkana*, (1887) Unrep. Cr. C. 389.

<sup>10</sup> *Donnelly*, (1877) 2 Cal. 405.

<sup>11</sup> *Lorinda Ram-Sewa Ram*, (1919) 1 Lah. 35.

<sup>12</sup> *Basapa*, (1884) 9 Bom. 172; *Sahadeo*, (1890) 14 Bom. 572.

<sup>13</sup> *Ganeshi*, (1898) 15 All. 192, F.B.

<sup>14</sup> *Ananda Chunder Singh v. Basu Muth*, (1896) 24 Cal. 167.

<sup>15</sup> *Mohan Lal*, (1904) 27 All. 25.

<sup>16</sup> *Amrit Majhi*, (1919) 46 Cal. 854.

<sup>17</sup> *Hargobind*, (1911) 33 All. 583.

<sup>18</sup> *Jivanji Adanji*, (1898) 23 Bom. 490.

**558.** The Provincial Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the Courts which are High Courts for the purposes of the Government of India Act, 1935.

Provision for powers of Judges and Magistrates being exercised by their successors in office.

**559. (1)** Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

**(2)** When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a presidency town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

**(3)** When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge.

Officers concerned in sales not to purchase or bid for property.

**560.** A public seryant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

**COMMENT.**—See s. 169 of the Indian Penal Code, which provides punishment for the offence.

**561. (1)** Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall—

Special provisions with respect to offence of rape by a husband.

**(a)** take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

**(b)** commit the man for trial for the offence.

**(2)** And, notwithstanding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a police-officer, with respect to such an offence as is referred to in sub-section (1), no police-officer of a rank below that of police-inspector shall be employed either to make, or to take part in, the investigation.

**561A.** Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court<sup>1</sup> or otherwise to secure the ends of justice.<sup>2</sup>

**COMMENT.**—This section has not given increased powers to the Court which it did not possess before the section was enacted. It gives no new powers. It only provides that those which the Court already inherently possess shall be preserved,

and is inserted lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code and that no inherent power had survived the passing of the Code.<sup>1</sup> Though this jurisdiction exists and is wide in its scope it is a rule of practice that it will only be exercised in exceptional cases.<sup>2</sup> It cannot be invoked with respect to any matter expressly dealt with by the Code,<sup>3</sup> or when there is another remedy available, e.g. a civil proceeding,<sup>4</sup> or when the powers of the High Court are expressly limited to a particular matter under an Act.<sup>5</sup>

This section closely resembles s. 151 of the Civil Procedure Code. The inherent powers can be invoked in three cases: (1) to give effect to any order passed under the Code; (2) to prevent abuse of the process of any Court; or (3) to secure the ends of justice.

The section does not enable a High Court to pass orders which conflict with the provisions of the Code.<sup>6</sup> It will not entertain an application under s. 89 made beyond the prescribed period.<sup>7</sup> It cannot award to the successful party costs incurred in a revision application;<sup>8</sup> nor can it alter or review its own judgment in a criminal case, once it has been pronounced and signed, except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on the merits, or to correct a clerical error.<sup>9</sup>

1. 'To prevent abuse of the process of any Court.'—The word "process" is a general word meaning in effect anything done by the Court.<sup>10</sup> It includes criminal proceedings in a subordinate Court.<sup>11</sup> Ordinarily the High Court will not interfere at an interlocutory stage of criminal proceedings in a subordinate Court but the High Court is under an imperative obligation to interfere in order to prevent the harassment of a subject of the Crown by an illegal prosecution. It would also interfere whenever there is any exceptional and extraordinary reason for doing so. One of the tests to apply in order to determine whether any particular case is of that exceptional nature or not is to see whether a bare statement of the facts of the case should be sufficient to convince the High Court that it is a fit case for its interference at an intermediate stage. Another test to be applied is to see whether in the admitted circumstances of the case it would be a mock trial if the case is allowed to proceed. Broadly speaking the High Court will generally interfere in the interest of justice and to stop abuse of process of laws. Where, therefore, the facts float on the surface and it seems that no assistance from *deus ex machina* is required to see that there is not even a scintilla of suspicion of criminal liability as against the accused the High Court would interfere and quash the proceedings because to allow the proceedings to continue would be allowing a farce to be enacted to the great harassment of the accused.<sup>12</sup>

<sup>1</sup> *Nazir Ahmed*, (1944) 47 Bom. L. R. 245, F.C.; *Raju*, (1928) 10 Lah. 1, 3; *Pratulchandra Mitra v. The Commandant, Hijli Detention Camp*, (1933) 61 Cal. 201; *Rogers v. Shrinivas*, (1940) 42 Bom. L. R. 478, [1940] Bom. 415.

<sup>2</sup> *S. C. Mitra v. Raja Kaki Charan*, (1927) 8 Luck. 287.

<sup>3</sup> *Bashiruddin Ahmad*, [1937] Nag. 236.

<sup>4</sup> *Lloyds Bank*, (1938) 36 Bom. L. R. 88.

<sup>5</sup> *Vishnu*, [1942] Nag. 197.

<sup>6</sup> *Gurunath*, (1924) 26 Bom. L. R.

719.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Veerappa Naidu v. Avudayammal*, (1924) 48 Mad. 262, F.B.; *Sankaralinga Mudaliar v. Narayana Mudaliar*, (1923) 45 Mad. 913, F.B.

<sup>9</sup> *Raju*, sup.; *Kunji Lal*, (1934) 56 All. 990; *Banwari Lal*, (1935) 57 All. 867.

<sup>10</sup> *Llewellyn Evans*, (1926) 28 Bom. L. R. 1043, 50 Bom. 741.

<sup>11</sup> *S. C. Mitra v. Raja Kaki Charan*, sup.

<sup>12</sup> *Hakim Abdul. Waki*, (1933) 9 Luck. 61.

2. 'To secure the ends of justice.'—The High Courts of Allahabad, Lahore, Nagpur and Rangoon have held that under this requirement, the High Court can expunge irrelevant or objectionable remarks from the judgments of the lower Courts even though no appeal or revision application has been preferred.<sup>1</sup> The Chief Court of Sind has followed this view.<sup>2</sup> The passage to be expunged must amount to an abuse of the process of a Court and also be irrelevant to the points at issue before the Court. No Court except the High Court has power to order such expunction.<sup>3</sup> The Bombay High Court has dissented from this view and held that the High Court has no such power where the High Court is hearing an application in appeal or revision, or has called for the record on its own motion, it can make any order consequential or incidental to the order under review. In such a case it is entitled to expunge any remarks in the lower Court's judgment which it thinks ought not to have been made.<sup>4</sup>

The High Court can set aside an *ex parte* order and direct re-hearing of a case which has gone on unrepresented owing to counsel's carelessness.<sup>5</sup> It can order restitution of property,<sup>6</sup> or stay criminal proceedings during the pendency of civil proceedings.<sup>7</sup>

### First offenders.

562. (1) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment<sup>1</sup> for not more than seven years, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or transportation for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances, in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him<sup>2</sup> at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour :

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the Provincial Government in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate, forwarding

<sup>1</sup> *Panchanan Banerji v. Upendra Nath Bhattacharji*, (1926) 40 All. 254; *Amar Nath*, (1924) 55 Lah. 476; *Benarsi Das*, (1928) 6 Lah. 166; *Daly*, (1927) 9 Lah. 269; *Bashiruddin Ahmad*, [1937] Nag. 236; *Ghandhi*, [1941] Ran. 566.

<sup>2</sup> *Ghumanmal*, [1944] Kar. 252.

<sup>3</sup> *Ghandhi*, sup.

<sup>4</sup> *Rogers v. Shrinivas*, (1940) 42

Bom. L. R. 478, [1940] Bom. 415; *Gokaran Prasad Gupta*, (1939) 15 Luck. 39.

<sup>5</sup> *Shiv Dat*, (1928) 3 Luck. 680.

<sup>6</sup> *Shree Wa v. C. I. Mehta*, (1927) 5 Ran. 558.

<sup>7</sup> *Jehangir v. Framji*, (1928) 30 Bom. L. R. 962; *Jogiah*, (1906) 31 Mad. 510.



the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 880.

(1A) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or release with admonition. any offence under the Indian Penal Code punishable with not more than two years' imprisonment and no previous conviction is proved against him, the Court before whom he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(2) An order under this section may be made by any Appellate Court or by the High Court when exercising its power of revision.

(3) When an order has been made under this section in respect of any offender, the High Court may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law :

Provided that the High Court shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(4) The provisions of sections 122, 126A and 406A shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

**COMMENT.**—This section is a piece of beneficent legislation. It enables the Court, under certain circumstances, to release the accused, who has been convicted, on probation of good conduct. It applies only to first offenders, who are entitled to the indulgence on the score of their age, character or antecedents, and to the circumstances in which the offence is committed. The object of this section is to avoid sending the first offender to prison for an offence which is not of a serious character and thereby run the risk of turning him into a regular criminal.<sup>1</sup> First offenders fall into two classes: (1) those above the age of twenty-one years and "convicted of an offence punishable with imprisonment for not more than seven years," and (2) those under the age of twenty-one years or women, and "convicted of an offence not punishable with death or transportation for life." A Court cannot pass an order under this section where the offence charged is punishable with more than seven years' imprisonment and the person accused is more than twenty-one years old.<sup>2</sup>

The order under this section can only follow a conviction, and can be substituted for a sentence. The period during which the offender can be bound over to keep the peace and be of good behaviour is one not exceeding three years. During the period, he is liable to be called upon to appear in Court to receive a sentence.

**Scope.**—Sub-section (1) is expressed in general language. It applies to a person convicted of an offence punishable with imprisonment of not more than a certain period. It covers the case of a conviction under any law. The term "previous conviction" similarly applies to a conviction under any law and is not confined

<sup>1</sup> *Mahomed Hanif*, (1942) 44 Bom. L. R. 456.

<sup>2</sup> *Yeshaba Sakhoba*, (1938) 40 Bom. L. R. 927.

to a conviction under the Indian Penal Code.<sup>1</sup>

1. 'Offence punishable with imprisonment.'—The phrase contemplates an offence primarily punishable with imprisonment. An offence punishable with fine only does not come within the scope of this sub-section.<sup>2</sup>

2. 'Instead of sentencing him.'—This expression, used in this sub-section and (1A), indicates that the order of probation can be passed after conviction, but before awarding the sentence and in substitution of it. If the sentence is once awarded, no order for probation can be passed thereafter.<sup>3</sup>

Where an offender is released on probation the imposition of a fine is illegal.<sup>4</sup>

**Proviso.**—The proviso to sub-s. (1) does not extend to the powers conferred by sub-s. (1A). Hence a third class Magistrate is entitled to exercise the powers conferred by sub-s. (1A).<sup>5</sup> A proviso governs what goes before it and does not affect what follows after it.<sup>6</sup>

**Sub-section (1A).**—The operation of this sub-section is confined to certain offences under the Indian Penal Code.<sup>7</sup> It covers offences punishable with fine only.<sup>8</sup> Sub-section (1) covers offences punishable with imprisonment. Power under this sub-section can be exercised by a second class Magistrate.<sup>9</sup>

The offences enumerated, are exhaustive and do not include their aggravated forms, e.g. s. 420 of the Indian Penal Code.<sup>10</sup>

**Sub-section (3).**—The High Court has power, on appeal or in revision, to set aside the order of the Magistrate and in lieu thereof to pass sentence on the offender according to law, provided that it cannot inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

**Appeal.**—An appeal lies from an order passed under this section.<sup>11</sup> If another person not coming within the purview of this section has also been convicted and sentenced in the same trial along with a person mentioned in the section, he also has a right of appeal by virtue of s. 415A, and he may appeal not only against his conviction but also against his sentence and this notwithstanding the fact that, if his case had stood alone, he would, because of the provisions of ss. 413 and 414 of the Code, have had no right of appeal.<sup>12</sup>

An appeal lies to the Sessions Judge from an order of a first class Magistrate.<sup>13</sup>

**Provision in case of offender failing to observe conditions of his recognizances.**

563. (1) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a war-

<sup>1</sup> *Chhotan*, (1935) 37 Bom. L. R. 182, 59, Bom. 514.

<sup>2</sup> *Kasturi*, (1926) 28 Bom. L. R. 1081.

<sup>3</sup> *Mieri Lal*, (1918) 17 A.L.J. R. 426.

<sup>4</sup> *Karim Baksh*, (1928) 10 Lah. 722.

<sup>5</sup> *Waman Patil*, (1937) 39 Bom. L. R. 1065, [1938] Bom. 58, F.B.; *Murthi-dhar v. Mahbub Khan*, (1924) 47 All. 353; *Maung Thein Aung*, [1940] Ran. 507.

<sup>6</sup> *Maung Thein Aung*, *ibid.*

<sup>7</sup> *Panduramji*, (1926) 28 Bom. L. R. 297; *Merwanji Mistry*, (1928) 30 Bom. L. R. 375, 52 Bom. 250; *Piara*

*Singh*, (1925) 7 Lah. 32; *Mi Kywa*, (1934) 12 Ran. 259.

<sup>8</sup> *Manchershaw*, (1934) 37 Bom. L. R. 105, 59 Bom. 352.

<sup>9</sup> *Muridhar v. Mahbub Khan, sup. Bakhshan*, (1926) 8 Lah. 38.

<sup>10</sup> *Nga Pyi*, (1905) 3 L.B.R. 95; *Ramjan Dadubhai*, (1915) Bom. L. R. 921; *Sunderam Ayyer*, (1917) 41 Mad. 533; *Ram Nawaz*, (1920) 1 Lah. 612.

<sup>11</sup> *Bahadur Molla v. Ismail*, (1924) 52 Cal. 403; *Mahdov*, (1926) 28 Bom. L. R. 671.

<sup>12</sup> *Sukul*, [1940] Ran. 381.

<sup>13</sup> *Mayandi v. Kudumban*, (1934) 57 Mad. 517.

rant for his apprehension.

(2) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence.

564. (1) The Court, before directing the release of an offender under section 562, sub-section (1), shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(2) Nothing in this section or in sections 562 and 563 shall affect the provisions of section 81 of the Reformatory Schools Act, 1897.

*Previously convicted Offenders.*

Order for notifying address of previously convicted offender.

565. (1) When any person having been convicted—

(a) by a Court in British India of an offence punishable under section 215, section 489A, section 489B, section 489C, or section 489D of the Indian Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment of either description for a term of three years or upwards, or

(b) by a Court or Tribunal in any Indian State acting under the general or special authority of the Central Government or of the Crown Representative of any offence which would, if committed in British India, have been punishable under any of the aforesaid sections or Chapters of the Indian Penal Code with like imprisonment for a like term, is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by a High Court, Court of Session, Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also order that his residence and any change of or absence from such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Provincial Government may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

(4) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(5) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.\*

\* Original sub-s. (5) was omitted by s. 3 of Act XXII of 1939 and original sub-s. (5) was renumbered (5).

**COMMENT.**—This section can be compared with s. 75 of the Indian Penal Code. It is one of the remedial measures for prevention of crimes. With a view to ensure good behaviour, it requires a released convict, in some cases, to report his movements for a period not exceeding five years. As, however, it interferes with the liberty of a subject, it “must be construed strictly.”<sup>1</sup>

It will be noticed that there should be—

(1) A previous conviction for an offence under ss. 215, 259A, 489B, 489C, 489D of the Indian Penal Code or any offence punishable under Chapter XII or Chapter XVII of the Code with imprisonment for three years or upwards.

(2) The conviction should be by a Court either in British India or in the territories of an Indian State acting under the general or special authority of the Central Government or the Crown Representative.

(3) There must be a subsequent conviction for any of the offences specified above by a High Court, Court of Session, Presidency Magistrate, District Magistrate or Magistrate of the first class.

If the above three conditions are fulfilled, the accused may, by an order passed at the time of passing the sentence, be required to report his residence after release for a period not exceeding five years.<sup>2</sup> The order may also be passed by an appellate Court or by the High Court in revision.<sup>3</sup>

An order under this section, in the absence of sentence of transportation or imprisonment, is illegal. It cannot be made where the Court passes a sentence of whipping.<sup>4</sup>

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## SCHEDULE I.

### • ENACTMENTS REPEALED.

*[Repealed by Act X of 1914, s. 3, and Sch. II].*

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<sup>1</sup> *Fulji Ditya*, (1910) 85 Bom. 187, 12 Bom. L. R. 901..

<sup>2</sup> *Ibid.*; *Naddi Chengadu*, (1917) 40 Mad. 789.

<sup>3</sup> *Hussain Beg.*, (1908) 81 Mad. 548.

<sup>4</sup> *Fulji Ditya*, sup.; *Ethwaru Dome*, (1935) 15 Pat. 44; *Ba Kyaw*, [1940] Ran. 527.

## SCHEDULE II.

## TABULAR STATEMENT OF OFFENCES.

**EXPLANATORY NOTE.**—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code", are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies also to the police in the towns of Calcutta and Bombay.

## CHAPTER V.—ABETMENT.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether offence bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Ditto	Ditto	Ditto	Ditto	The same punishment as for the offence intended to be abetted.	Ditto.
112	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto	Ditto	Ditto	Ditto	The same punishment as for the offence committed.	Ditto.

1114	Abetment of any offence, Ditto If abettor is present when offence is committed.	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto
1115	Abetment of an offence, Ditto Punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	...	Ditto	...	Not bailable	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.
	If an act which causes harm to be done in consequence of the abetment.	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 14 years and fine.
1116	Abetment of an offence, Ditto Punishable with imprisonment, if the offence be not committed in consequence of the abetment.	...	Ditto	...	According as the offence abetted is bailable or not.	...	Ditto	...	Ditto	...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence or fine, or both.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment extending to half of the longest term, and of any description, provided for the offence or fine, or both.
1117	Abetting the commission of an offence by the public, or by more than ten persons.	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 8 years, or fine, or both.
1118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed. If the offence be not committed.	...	Ditto	...	Not bailable	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.
1119	A public servant concealing a design to commit an offence which it is his duty to prevent if the offence be committed. If the offence be punishable with death or transportation for life. If the offence be not committed.	...	Ditto	...	Bailable	...	Ditto	...	Ditto	...	Imprisonment of either description for 8 years and fine.
		...	Ditto	...	According as the offence abetted is bailable or not.	...	Ditto	...	Ditto	...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.
		...	Ditto	...	Not bailable	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years.
		...	Ditto	...	Bailable	...	Ditto	...	Ditto	...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.

## CHAPTER V.—ABETMENT—concluded.

1	2	3	4	5	6	7	8
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	May arrest without warrant if arrest for the offence may be made without warrant, but not otherwise.	According as a warrant may issue for the offence abetted.	According as the offence concealed is bailable or not.	According as the offence abetted is compoundable or not.	The imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence abetted is triable.
	If the offence be not committed.	Ditto	Ditto	Bailable	Ditto	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

## CHAPTER VA.—CRIMINAL CONSPIRACY.

120B	Criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards.	May arrest without warrant if arrest for the offence which is the object of the conspiracy may be made without warrant, but not otherwise.	According as a warrant may issue for the offence which is the object of the conspiracy.	According as the offence which is the object of the conspiracy is bailable or not.	Not compoundable.	The same punishment as that provided for the abetment of the offence which is the object of the conspiracy.	The Court of Session when the offence which is the object of the conspiracy is triable exclusively by such Court; in the case of all other offences of Session, Presidency Magistrate or Magistrate of the first class.
	Any other criminal conspiracy.	Shall not arrest without a warrant.	Summons	Bailable	Ditto	Imprisonment of either description for six months and fine or both.	Presidency Magistrate or Magistrate of the first class.

## CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant	Not bailable	Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto	Ditto	Ditto	Ditto	Transportation for life or any shorter term, or imprisonment of either description for 10 years and fine.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.





CHAPTER VII.—OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE.—*concl.*

1	2	3	4	5	6	7	8
132	Abetment of an assault by an officer, soldier, sailor or airman on his superior officer, when in the execution of his office.	May arrest without warrant.	Warrant ...	Not bailable	... Not compound- able.	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto	... Ditto	... Ditto	... Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier, sailor or airman.	Ditto	... Ditto	... Bailable	... Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier, sailor or airman, who has deserted.	Ditto	... Ditto	... Ditto	... Ditto	... Ditto	Ditto.
137	Desertion concealed on board merchant vessel through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	... Ditto	... Ditto	Fine of 500 rupees	Ditto.
138	Abetment of act of insubordination by an officer, soldier, sailor or airman if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	... Ditto	... Ditto	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, sailor or airman with intent that it may be believed that he is such a soldier, sailor or airman.	Ditto	... Summons	... Ditto	... Ditto	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

## THE CRIMINAL PROCEDURE CODE.

[SCHED. II.

## CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILITY.

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons ...	... Bailable	... Not compound- able.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto	... Warrant	... Ditto	... Ditto	Imprisonment of either description for 4 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been convened to disperse.	Ditto	... Ditto	... Ditto	... Ditto	... Ditto	Ditto.
147	Rioting	Ditto	... Ditto	... Ditto	... Ditto	... Ditto	Ditto.

143	Rioting, armed with a deadly weapon.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class.
144	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	...	...	...	...	...	...	The same as for the offence.
145	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	...	...	...	...	...	...	Ditto.
146	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto	...	...	...	...	...	...	Ditto.
147	Assaulting or obstructing a public servant when suppressing riot, etc.	Ditto	...	...	...	...	...	...	Any Magistrate.
148	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto	...	...	...	...	...	...	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class.
149	If not committed.	Ditto	...	...	...	...	...	...	Imprisonment of either Any Magistrate.
149A	Promoting enmity between classes.	Shall not arrest without warrant	...	...	...	...	...	...	Ditto.
150	Owner or occupier of land not giving information of riot, etc.	Ditto	...	...	...	...	...	...	Imprisonment of either Presidency Magistrate or Magistrate of the first class.
151	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto	...	...	...	...	...	...	Imprisonment of either Presidency Magistrate or Magistrate of the first or second class.
152	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto	...	...	...	...	...	...	Ditto.
153	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	...	...	...	...	...	...	Ditto.

## CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILITY.—concluded.

1	2	3	4	5	6	7	8
158	Being hired to take part in an unlawful assembly or riot. Or to go armed ...	May arrest without warrant. Ditto ...	Summons ... Warrant ...	Bailable ... Ditto ...	Not compound- able. Ditto ...	Imprisonment of either description for 6 months, on fine, or both. Imprisonment of either description for 2 years, or fine, or both. Imprisonment for one month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class. Ditto. Any Magistrate.
160	Committing affray ...	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	...	...

## CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Small not arrest without warrant.	Summons ...	Bailable ...	Not compound- able.	Imprisonment of either description for 8 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 8 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

168	Public servant unlawfully engaging in trade.	...	...	...	...	...	...	...	...	...	...	...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.	Ditto.
169	Public servant unlawfully buying or bidding for property.	...	...	...	...	...	...	...	...	...	...	...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Any Magistrate.	Ditto.
170	Personating a public servant without warrant.	...	...	...	...	...	...	...	...	...	...	...	Imprisonment for 2 years, or fine, or both.	Any Magistrate.	Ditto.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	...	...	...	...	...	...	...	...	...	...	...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Any Magistrate.	Ditto.
CHAPTER IXA.—OFFENCES RELATING TO ELECTIONS.															
171E	Bribery ... ..	...	...	...	...	...	...	...	...	...	...	...	...	...	...
171F	Undue influence and per- version as an election.	...	...	...	...	...	...	...	...	...	...	...	...	...	...
171G	False statement in connection with an election.	...	...	...	...	...	...	...	...	...	...	...	...	...	...
171H	Illegal payments in connection with elections.	...	...	...	...	...	...	...	...	...	...	...	...	...	...
171I	Failure to keep election accounts.	...	...	...	...	...	...	...	...	...	...	...	...	...	...
CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.															
172	According to avoid arrest— vice of summons or other proceeding from a public servant.	...	...	...	...	...	...	...	...	...	...	...	...	...	...
173	If summons or notice require attendance in person etc., in a Court of Justice.	...	...	...	...	...	...	...	...	...	...	...	...	...	...
173	Preventing the service or affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	...	...	...	...	...	...	...	...	...	...	...	...	...	...

\*In the Bombay Presidency, in the Punjab, in the Central Provinces and in the North-West Frontier Province the words italicised are omitted by Bom. Act XXXIX of 1936, Punj. Act I of 1936, C. P. Act XLX of 1936, and North-West Frontier Province Act X of 1937 and VIII of 1938, respectively.

† For the word "Ditto" the words "shall not arrest without warrant" are substituted by Bom. Act XXXIX of 1936 and C. P. Act XLX of 1936, and North-West Frontier Province Act X of 1937 and VIII of 1938, respectively.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*continued.*

1	2.	3	4	5	6	7	8
173 ( <i>old</i> )	If summons, etc., require attendance in person, etc., in a Court of Justice.	Shall not arrest without warrant.	...	Bailable ...	Not compound.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
174	Not obeying a legal order in person or by agent, or departing therefrom without authority.	Ditto	...	Ditto	Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
175	If the order require personal attendance, etc., in a Court of Justice.	Ditto	...	Ditto	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto	...	Ditto	Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
176	If the document is required to be produced in or delivered to a Court of Justice.	Ditto	...	Ditto	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto	...	Ditto	Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
177	If the notice or information required respects the commission of an offence, etc.	Ditto	...	Ditto	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
177	If the notice or information is required by an order passed under subsection (1) of s. 165 of this Code.	Ditto	...	Ditto	Ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto	...	Ditto	Ditto	Ditto	Ditto.
177	If the information required respects the commission of an offence, etc.	Ditto	...	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

176	Refusing oath when duly Ditto required to take oath by a public servant.	...	...Ditto	...	...Ditto	...	...Ditto	...	Simple imprisonment for 6 months, or fine of 1000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
177	Being legally bound to state truth, and refusing to answer questions.	...	...Ditto	...	...Ditto	...	...Ditto	...	...	Ditto.
178	Refusing to sign a statement made to a public servant when legally required to do so.	...	...Ditto	...	...Ditto	...	...Ditto	...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
179	Knowingly stating to a public servant on oath as true that which is false.	...	Warrant	...	...Ditto	...	...Ditto	...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
180	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	...	Summons	...	...Ditto	...	...Ditto	...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
181	Resistance to the taking of property by the lawful authority of a public servant.	...	...Ditto	...	...Ditto	...	...Ditto	...	...	Ditto.
182	Obstructing sale of property offered for sale by authority of a public servant.	...	...Ditto	...	...Ditto	...	...Ditto	...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
183	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligation incurred thereby.	...	...Ditto	...	...Ditto	...	...Ditto	...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
184	Obstructing public servant in discharge of his public functions.	...	...Ditto	...	...Ditto	...	...Ditto	...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.
185	Omission to assist public servant when bound by law to give such assistance.	...	...Ditto	...	...Ditto	...	...Ditto	...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
186	Willfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc.	...	...Ditto	...	...Ditto	...	...Ditto	...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.

## CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—concluded.

1	2	3	4	5	6	7	8
183	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compound-able.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If such disobedience causes danger to human life, health or safety, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
188	Threatening a public-servant with injury to him, or to one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

183	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compound-able.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Ditto.
184	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto	Ditto	Not bailable	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
	If innocent person be threatened by convicted and executed.	Ditto	Ditto	Ditto	Ditto	Death, or as above	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for 7 years or upwards.	Ditto	Ditto	Ditto	Ditto	The same as for the offence.	Ditto.

194	Using in a judicial proceeding evidence known to be false or fabricated.	...	...	...	...	...	...	...	...According as the offence of giving such evidence is bailable or not.	...	...	...The same as for giving Court of Session, Presidency Magistrate or Magistrate of the first class.
195	Knowing lending or signing a false certificate relating to any fact of which such certificate is by law receivable in evidence.	...	...	...	...	...	...	...	...Bailable ...	...	...	...Ditto.
196	Using as a true certificate one known to be false in a material point.	...	...	...	...	...	...	...	...Ditto	...	...	...Ditto.
197	False statement made in any declaration which is by law receivable as evidence.	...	...	...	...	...	...	...	...Ditto	...	...	...Ditto.
198	Using as true any such declaration known to be false.	...	...	...	...	...	...	...	...Ditto	...	...	...Ditto.
199	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	...	...	...	...	...	...	...	...Ditto	...	...	...Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class, or fine.
200	If punishable with transportation for life or imprisonment for 10 years.	...	...	...	...	...	...	...	...Ditto	...	...	...Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class, or fine.
201	If punishable with less than 10 years' imprisonment.	...	...	...	...	...	...	...	...Ditto	...	...	...Imprisonment for a quarter of the longest term, or of the description, or of Court by which provided for the offence, or fine, or both.
202	International evasion to give information of an offence by a person legally bound to inform.	...	...	...	...	...	...	...	...Ditto	...	...	...Imprisonment of either Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	...	...	...	...	...	...	...	...Ditto	...	...	...Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	...	...	...	...	...	...	...	...Ditto	...	...	...Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class, or fine, or both.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for obtaining bail or security.	...	...	...	...	...	...	...	...Ditto	...	...	...Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class, or fine, or both.



## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—continued.

1	2	3	4	5	6	7	8
206	Fraudulent removal or concealment, etc., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	... Shall not arrest without warrant.	...	... Bailable ...	... Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	... Ditto	...	... Ditto	... Ditto	... Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering a decree to be executed after it has been satisfied.	... Ditto	...	... Ditto	... Ditto	... Ditto	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice.	... Ditto	...	... Ditto	... Ditto	Imprisonment of either description for 2 years, and fine.	Ditto.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	... Ditto	...	... Ditto	... Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False charge of offences made with intent to injure.	... Ditto	...	... Ditto	... Ditto	... Ditto	Ditto.
	If offence charged be punishable with imprisonment for 7 years or upwards.	... Ditto	...	... Ditto	... Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If offence charged be capital, or punishable with transportation for life.	... Ditto	...	... Ditto	... Ditto	... Ditto	Court of Session.
212	Harbours an offender if the offence be capital.	May arrest without warrant.	...	... Ditto	... Ditto	Imprisonment of either description for 5 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	... Ditto	...	... Ditto	... Ditto	Imprisonment of either description for 5 years, and fine.	Ditto.



CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*continued.*

1	2	3	4	5	6	7	8
216	Harboring robbers or deserters.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Rigorous imprisonment for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Consentment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto. <sup>e</sup>
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend persons under sentence of a Court of Justice if under sentences of death.	Ditto	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.

222 cld.	If under sentence of trans- portation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards.	...	...Ditto	...	...Ditto	...	...Ditto	...	...Imprisonment of either description for 7 years, with or without fine.	Ditto.
-	If under sentence of imprisonment for less than 10 years or lawfully committed to custody.	...	...Ditto	...	...Bailable	...	...Ditto	...	...Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
223	Escape from confinement. negligently suffered by a public servant.	...	...Ditto	...	...Ditto	...	...Ditto	...	...Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	...	...	...Ditto	...	...Ditto	...	...Imprisonment of either description for 2 years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or refusing him from lawful custody.	...	...Ditto	...	...Ditto	...	...Ditto	...	...Ditto	Ditto.
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	...	...Ditto	...	...Ditto	...	...Ditto	...	...Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence.	...	...Ditto	...	...Ditto	...	...Ditto	...	...Imprisonment of either description for 7 years, and fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	...	...Ditto	...	...Ditto	...	...Ditto	...	...Ditto	Ditto.
	If under sentence of death.	...	...Ditto	...	...Ditto	...	...Ditto	...	...Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
225A	Omission to apprehend, or sufferance of escape on part of public servant, in cases not otherwise provided for— (a) in cases of intentional omission or sufferance.	Shall not arrest without warrant.	...	...	...Bailable	...	...Ditto	...	...Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	(b) in case of negligent omission or sufferance.	...	...Ditto	...	...Ditto	...	...Ditto	...	...Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*concluded.*

1	2	3	4	5	6	7	8
226B	Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.	May arrest without warrant.	...	Bailable ...	Not compound-able.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
226	Unlawful return from transportation.	Ditto	...	Not bailable	Ditto	Transportation for life, and fine, and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons	Ditto	Ditto	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto	Ditto	Bailable	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV.
229	Persuasion of a juror or assessor.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

## CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	...	Not bailable	Not compound-able.	Imprisonment of either description for 7 years, and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If Queen's coin	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, and fine.	Court of Session.

236	Abetting in British India Ditto the counterfeiting out of British India of coin.	...	...Ditto	...	...Ditto	...	...The punishment provided for abetting the counter- feiting of such coin is imprisonment of either description for 3 years, and fine.	Ditto.
237	Import or export of Ditto counterfeit coin, knowing the same to be counterfeit.	...	...Ditto	...	...Ditto	...	...Court of Session, Pres- dency Magistrate or Magistrate of the first class.	
238	Import or export of coun- terfeits of the Queen's coin, knowing the same to be counterfeit.	...	...Ditto	...	...Ditto	...	...Transportation for life or imprisonment of either description for 10 years, and fine.	Court of Session.
239	Having any counterfeit Ditto coin known to be such when it came into posses- sion, and delivering, etc., the same to any person.	...	...Ditto	...	...Ditto	...	...Imprisonment of either description for 5 years, and fine.	Court of Session, Pres- dency Magistrate or Magistrate of the first class.
240	The same with respect to Ditto the Queen's coin.	...	...Ditto	...	...Ditto	...	...Imprisonment of either description for 10 years and fine.	Ditto.
241	Knowingly delivering to Ditto another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	...	...Ditto	...	...Ditto	...	...Imprisonment of either description for 2 years, or fine of ten times the value of the coin coun- terfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit Ditto coin by a person who knew it to be counterfeit when he became possessed thereof.	...	...Ditto	...	...Ditto	...	...Imprisonment of either description for 8 years, and fine.	Court of Session, Pres- dency Magistrate or Magistrate of the first class.
243	Possession of Queen's coin Ditto by a person who knew it to be counterfeit when he became possessed thereof.	...	...Ditto	...	...Ditto	...	...Imprisonment of either description for 7 years, and fine.	Ditto.
244	Person employed in a Mint Ditto causing coin to be of a different weight or com- position from that fixed by law.	...	...Ditto	...	...Ditto	...	...Ditto ... ..	Court of Session.
245	Unlawfully taking from a Ditto Mint any coining instru- ment.	...	...Ditto	...	...Ditto	...	...Ditto ... ..	Ditto.
246	Fraudulently diminishing the Ditto weight or altering the composition of any coin.	...	...Ditto	...	...Ditto	...	...Imprisonment of either description for 8 years, and fine.	Court of Session, Pres- dency Magistrate or Magistrate of the first class.
247	Fraudulently diminishing the Ditto weight or altering the composition of the Queen's coin.	...	...Ditto	...	...Ditto	...	...Imprisonment of either description for 7 years, and fine.	Ditto.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*concluded.*

1	2	3	4	5	6	7	8
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	May arrest without warrant.	...	Not bailable	Not compoundable.	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class.	...
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	...	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Ditto.
250	Delivery to another of coin possessed with the knowledge that it is altered.	...	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	...	Ditto	Ditto	Ditto	Imprisonment of either description for 5 years, and fine.	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	...	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	...	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Ditto.
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	...	Ditto	Ditto	Ditto	Imprisonment of either description for 5 years, and fine.	Ditto.
255	Counterfeiting a Government stamp.	...	Ditto	Bailable	Ditto	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.
256	Having possession of an instrument or material for the purposes of counterfeiting a Government stamp.	...	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
257	Making, buying or selling an instrument for the purpose of counterfeiting a Government stamp.	...	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto.
258	Sale of counterfeit Government stamp.	...	Ditto	Ditto	Ditto	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	...	Ditto	Ditto	Ditto	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.

260	Using as genuine a Government stamp known to be counterfeited.	... Ditto ...	... Ditto ...	... Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	... Ditto ...	... Ditto ...	... Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been so used.	... Ditto ...	... Ditto ...	... Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Eraseure of mark denoting that stamp has been used.	... Ditto ...	... Ditto ...	... Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	Magistrate of the first class.
264	Fictitious stamps	... Ditto ...	... Ditto ...	... Fine of 200 rupees	Presidency Magistrate or Magistrate of the first class.

## CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false In- strument for weighing.	Shall not without warrant.	...	...Ballable ...	...	...Not able.	...	...compound- imprisonment of either Presidency Magistrate or description for 1 year, Magistrate of the first or second class. Ditto.
265	Fraudulent use of false Ditto weight or measure.	...	...	...	...	...	...	...
266	Being in possession of false Ditto weights or measures for fraudulent use.	...	...	...	...	...	...	...
267	Making or selling false Ditto weights or measures for fraudulent use.	...	...	...	...	...	...	...

**CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.**

266	Negligently doing any act May arrest with-Summons known to be likely to out warrant.	...	...Bailable ...	...	Not compound-able.	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the first or second class.
270	Malignantly doing any act Ditto known to be likely to spread infection of any disease dangerous to life.	...	...Ditto ...	...	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any Shall not arrest. Ditto quarantine rule. without warrant.	...	...Ditto ...	...	Ditto	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
272	Adulterating food or drink Ditto intended for sale, so as to make the same noxious.	...	...Ditto ...	...	Ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.



1	2	3	4	5	6	7	8
273	Selling any food or drink as food and drink knowing the same to be noxious.	Shall not arrest without warrant.	...	...Bailable ...	...Not abla.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	...	...	...	...	...	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	...	...	...	...	...	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	...	...	...	...	...	Ditto.
277	Deiling the water of a public spring or reservoir.	May arrest without warrant.	...	...	...	...	Any Magistrate.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	...	...	...	...	Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, etc.	May arrest without warrant.	...	...	...	...	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, etc.	...	...	...	...	...	Ditto.
281	Exhibition of a false light, mark or buoy.	...	...	...	...	...	Presidency Magistrate or Magistrate of the first or second class.
282	Conveying for hire any person, by water, in a vessel in such a state, or so loaded, as to endanger his life.	...	...	...	...	...	Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction or injury in any public way or line of navigation.	...	...	...	...	...	Ditto.

284	Dealing with any poisonous substance so as to endanger human life, etc.	Shall not arrest without warrant.	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, etc.	May arrest without warrant.	Ditto	...	Ditto	...	Any Magistrate.	
286	So dealing with any explosive substance.	Ditto	Ditto	...	Ditto	...	Ditto	Ditto.
287	So dealing with any machinery.	Shall not arrest without warrant.	Ditto	...	Ditto	...	...	Presidency Magistrate or Magistrate of the first or second class.
288	A person committing to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto	Ditto	...	Ditto	...	...	Ditto.
289	A person committing to order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	Ditto	...	Ditto	...	Any Magistrate.	
290	Committing a public nuisance.	Shall not arrest without warrant.	Ditto	...	Ditto	...	Fine of 200 rupees	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, etc., of obscene books, etc.	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 3 months, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
293	Sale, etc., of obscene objects to young persons.	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	Ditto
294	Obscene songs	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 3 months or fine, or both.	Any Magistrate.
294A	Keeping a lottery office.	Shall not arrest without warrant.	Ditto	...	Ditto	...	Imprisonment for 6 months, or fine, or both.	Ditto.
294B	Publishing proposals relating to lotteries.	Ditto	Ditto	...	Ditto	...	Fine of 1,000 rupees	Ditto.

## CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	...	...	...	...	Imprisonment of either description for 3 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
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## CHAPTER XV.—OFFENCES RELATING TO RELIGION.—concluded.

1	2	3	4	5	6	7	8
295A	Meliciously insulting the religion or religious beliefs of any class.	Shall not arrest without warrant.	...	...Not Ballable	...Not compoundable.	Imprisonment of either Court of Session or Presidency Magistrate, or fine, or both.	...
296	Causing a disturbance to an assembly engaged in religious worship.	May arrest without warrant.	...	...Ballable ...	...Ditto ...	Imprisonment of either Court of Session or Presidency Magistrate, or fine, or both.	Presidency Magistrate of the first or second class.
297	Trespassing in places of worship or sepulture, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	May arrest without warrant.	...	...Ballable	...Ditto ...	Imprisonment of either Court of Session or Presidency Magistrate, or fine, or both.	Presidency Magistrate of the first or second class.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feelings.	Shall not arrest without warrant.	...	...Ditto ...	...Compoundable ...	Ditto ...	Ditto.

## CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

*Of Offences affecting Life.*

302	Murder ...	...May arrest without warrant.	...	...Not ballable	...Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto	...	...Ditto ...	...Ditto ...	Death ...	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc. If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	...Ditto	...	...Ditto ...	...Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
304A	Causing death by rash or negligent act.	...Ditto	...	...Ballable ...	...Ditto ...	Imprisonment of either Court of Session or Presidency Magistrate, or fine, or both.	Presidency Magistrate of the first class.

305	Abetment of suicide committed by a child, or by some other person or an idiot, or a person insane.	...	...Ditto	...	...Not bailable	...Ditto	...	...Death, or transportation for life, or imprisonment for 10 years, and fine.	...	...Ditto.
306	Abetting the commission of suicide.	...	...Ditto	...	...Ditto	...	...	...Imprisonment of either description for 10 years, and fine.	...	...Ditto.
307	Attempt to murder if such act cause hurt to any person.	...	...Ditto	...	...Ditto	...	...	...Ditto	...	...Ditto.
308	Attempt by life-convict to murder, if effort is caused.	...	...Ditto	...	...Ditto	...	...	...Transportation for life, or as above.	...	...Ditto.
309	Attempt to commit suicide.	...	...Ditto	...	...Ditto	...	...	...Death, or as above.	...	...Ditto.
310	Attempt to commit suicide.	...	...Ditto	...	...Ditto	...	...	...Imprisonment of either description for 3 years, or fine, or both.	...	...Ditto.
311	Being a thief	...	...Ditto	...	...Ditto	...	...	...Imprisonment of either description for 7 years, or fine, or both.	...	...Ditto.
312	Causing miscarriage.	...	...Ditto	...	...Ditto	...	...	...Simple imprisonment for one year, or fine, or both.	...	...Ditto.
313	Causing miscarriage with- out woman's consent.	...	...Ditto	...	...Ditto	...	...	...Transportation for life, or second class, or Court of Sessions.	...	...Ditto.
314	Death caused by an act done with intent to cause miscarriage.	...	...Ditto	...	...Ditto	...	...	...Imprisonment of either description for 8 years, or fine, or both.	...	...Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	...	...Ditto	...	...Ditto	...	...	...Imprisonment of either description for 7 years, and fine.	...	...Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	...	...Ditto	...	...Ditto	...	...	...Transportation for life, or as above.	...	...Ditto.
		...	...Ditto	...	...Ditto	...	...	...Imprisonment of either description for 10 years, or fine, or both.	...	...Ditto.

*Of the causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants and of the Concealment of Births.*

CHAPTER XVI.—OFFENCE AFFECTING THE HUMAN BODY.—*continued.**Of the causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants and of the Concealment of Births.—Concluded.*

1	2	3	4	5	6	7	8
317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it.	May arrest without warrant.	...	...Bailable ...	...Not compoundable.	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class.	
318	Concealment of birth by secret disposal of dead body.	Ditto	...	...Ditto ...	...Ditto ...	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class.	Ditto.
<i>Of Hurt.</i>							
323	Voluntarily causing hurt Shall not arrest without warrant.	...	...	...Bailable ...	...Compoundable ...	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class.	
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	...	...Ditto ...	...Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	
325	Voluntarily causing grievous hurt.	Ditto	...	...Ditto ...	...Ditto ...	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto	...	...Not bailable	...Not compoundable.	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	Ditto.
327	Voluntarily causing hurt to extort property or to enable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Ditto	...	...Ditto ...	...Ditto ...	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	Ditto.
328	Administering stupefying drug with intent to cause hurt, etc.	Ditto	...	...Ditto ...	...Ditto ...	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	Ditto.



CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*continued.**Of Wrongful Restraint and Wrongful Confinement.*

1	2	3	4	5	6	7	8
341	Wrongfully restraining any person.	May arrest without warrant.	...	... Bailable ...	... Compoundable ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person.	...	... Ditto ...	... Ditto ...	... Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
343	Wrongfully confining for three or more days.	...	... Ditto ...	... Ditto ...	... Compoundable when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
344	Wrongfully confining for 10 or more days.	...	... Ditto ...	... Ditto ...	... Not compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	...	... Ditto ...	... Ditto ...	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	9
346	Wrongful confinement in secret.	May arrest without warrant.	...	... Ditto ...	... Compoundable when permission is given by the Court before which the prosecution is pending.	Ditto ...	Ditto.
347	Wrongful confinement for the purpose of extorting property or constraining to an illegal act, etc.	...	... Ditto ...	... Ditto ...	... Not compoundable.	Imprisonment of either description for 3 years, and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, etc.	...	... Ditto ...	... Ditto ...	... Ditto ...	Ditto ...	Court of Session, Presidency Magistrate or Magistrate of the first class.

THE CRIMINAL PROCEDURE CODE.

[SCHED. II.]

*Of Criminal Force and Assault.*

232	Assault or use of criminal force otherwise than on grave provocation.	... Shall not arrest without warrant.	...	Bailable ...	... Compoundable ...	Imprisonment of either Any Magistrate, description for 3 months, or fine of 500 rupees, or both.
233	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	...	Ditto ...	... Not compoundable.	Imprisonment of either Presidency Magistrate or Magistrate of the first or second class, description for 3 years, or fine, or both.
234	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto	...	Ditto ...	... Ditto ...	Ditto.
235	Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	...	Ditto ...	... Compoundable ...	Ditto.
236	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	...	Not bailable	... Not compoundable.	Imprisonment of either Any Magistrate, description for 3 years, or fine, or both.
237	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto	...	Bailable ...	... Compoundable when permission is given by the Court before which the prosecution is pending.	Ditto.
238	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	...	Ditto ...	... Compoundable ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.

*Of Kidnapping, Abduction, Slavery and Forced Labour.*

239	Kidnapping ...	May arrest without warrant.	...	Bailable ...	... Not compoundable.	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class, description for 7 years, and fine.
240	Kidnapping or abducting in order to murder.	Ditto	...	Not bailable	... Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.
241	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto	...	Ditto ...	... Ditto ...	Court of Session, Presidency Magistrate or Magistrate of the first class, description for 7 years, and fine.
242	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto	...	Ditto ...	... Ditto ...	Imprisonment of either Court of Session, description for 10 years, and fine.



CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—concluded.  
Of Kidnapping, Abduction, Slavery and Forced Labour.—concluded.

1	2	3	4	5	6	7	8
296A	Procurement of minor girl...	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable ...	Imprisonment of either description for 10 years, and fine. ...	Court of Session.
296B	Importation of girl from foreign country.	...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
297	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.	...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
298	Concealing or keeping in confinement a kidnapped person.	...	Ditto ...	Ditto ...	Ditto ...	Punishment for kidnapping or abduction.	Court of Session, Presidency Magistrate or Magistrate of the first class.
299	Kidnapping or abducting a child with intent to take property from the person of such child.	...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
300	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto ...	Ditto ...	Court of Session.
301	Habitual dealing in slaves.	May arrest without warrant.	Ditto ...	Not bailable ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
302	Selling or letting to hire a minor for purposes of prostitution, etc.	...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
303	Buying or obtaining possession of a minor for the same purposes.	...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
304	Unlawful compulsory labour.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Compoundable ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
<b>Of Rape.</b>							
305	If the sexual intercourse was by a man with his own wife not being under 12 years of age.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Chief Presidency Magistrate or District Magistrate.
306	If the sexual intercourse was by a man with his own wife under 12 years of age.	...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
307	In any other case ...	May arrest without warrant.	Warrant ...	Not bailable ...	Ditto ...	Ditto ...	Ditto.

*Of Unnatural Offences.*

277	Unnatural offences	... May arrest without warrant	... Not bailable	... Not compound-Transportation for life, or Court of Session, Pres- dency Magistrate or description for 10 years, and fine.	Magistrate of the first class.
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## CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

*Of Theft.*

279	Theft	... May arrest without warrant	... Not bailable	... Not compound-Imprisonment of either Any Magistrate, description for 3 years, or fine, or both.	
280	Theft in a building, tent or vessel.	... Ditto	... Ditto	... Imprisonment of either description for 7 years, and fine.	Ditto.
281	Theft by clerk or servant of Ditto property in possession of master or employer.	... Ditto	... Ditto	... Ditto	Court of Session, Pres- dency Magistrate or Magistrate of the first or second class.
282	Theft, preparation having Ditto been made for causing death, or hurt, or re- straint, or fear of death, or of hurt, or of restraint, in order to the committing of such theft, or to retiring after committing it, or to retaining property taken by it.	... Ditto	... Ditto	... Rigorous imprisonment for 10 years, and fine.	Court of Session, Pres- dency Magistrate or Magistrate of the first or second class.

*Of Extortion.*

284	Extortion	... Shall not arrest without warrant	... Bailable	... Not compound-Imprisonment of either Court of Session, Pres- dency Magistrate or Magistrate of the first or second class.	
285	Putting or attempting to put in fear of injury, in order to commit extortion.	... Ditto	... Ditto	... Imprisonment of either description for 3 years, or fine, or both.	Ditto.
286	Extortion by putting a Ditto person in fear of death or grievous hurt.	... Ditto	... Not bailable	... Imprisonment of either description for 10 years, and fine.	Court of Session.
287	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	... Ditto	... Ditto	... Imprisonment of either description for 7 years, and fine.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—*continued.*  
*Of Extortion.—concluded.*

1	2	3	4	5	6	7	8
283	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Shall not arrest without warrant.	...	...Bailable ...	...Not compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
284	If the offence threatened be an unnatural offence.	Ditto	...	...Ditto	...	Transportation for life ...	Ditto.
285	Putting a person in fear of accusation of offence punishable with death, transportation for life, or imprisonment for 10 years, in order to commit extortion.	Ditto	...	...Ditto	...	Imprisonment of either description for 10 years, and fine.	Ditto.
286	If the offence be an unnatural offence.	Ditto	...	...Ditto	...	Transportation for life ...	Ditto.

*Of Robbery and Dacoity.*

287	Robbery	May arrest without warrant.	...	...Not bailable	...Not compoundable.	Rigorous Imprisonment for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
288	If committed on the highway between sunset and sunrise.	Ditto	...	...Ditto	...	Rigorous imprisonment for 14 years, and fine.	Ditto.
289	Attempt to commit robbery.	Ditto	...	...Ditto	...	Rigorous imprisonment for 7 years, and fine.	Ditto.
290	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto	...	...Ditto	...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
291	Dacoity	Ditto	...	...Ditto	...	Ditto	Court of Session.
292	Murder in dacoity	Ditto	...	...Ditto	...	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
293	Robbery or dacoity, with attempt to cause death or grievous hurt.	Ditto	...	...Ditto	...	Rigorous imprisonment for not less than 7 years.	Ditto.

396	Attempt to commit robbery or destroy when armed with deadly weapon.	...	Ditto	...	Ditto	...	Ditto	...	Ditto
398	Making preparation to commit robbery.	...	Ditto	...	Ditto	...	Ditto	...	Ditto
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	...	Ditto	...	Ditto	...	Ditto	...	Ditto
401	Belonging to a gang of persons associated for the purpose of habitually committing thefts.	...	Ditto	...	Ditto	...	Ditto	...	Ditto
402	Being one of five or more persons assembled for the purpose of committing dacoity.	...	Ditto	...	Ditto	...	Ditto	...	Ditto

## Of Criminal Misappropriation of Property.

403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest Warrant without warrant.	...	... Bailable ...	... Compo und a ble Imprisonment of either when permission is given by the Court before which the prosecution is pending.	Any Magistrate.
404	Dishonest misappropriation of property knowing that it was in possession of a deceased person at his death and that it has not since been in the possession of any person legally entitled to it.	Ditto	...	... Ditto ...	Not compoundable.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If by clerk or person employed by deceased.	Ditto	...	... Ditto ...	Imprisonment of either description for 3 years, and fine.	Ditto.
			...	... Ditto ...	Imprisonment of either description for 7 years, and fine.	

### *Of Criminal Breach of Trust.*

408	Criminal breach of trust ... •	May arrest without Warrant.	...	Not liable	...Not compound-Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—*continued.**Of Criminal Breach of Trust.—concluded.*

1	2	3	4	5	6	7	8
407	Criminal breach of trust by a carrier, wharfinger, etc.	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
409	Criminal breach of trust by public servant or by banker, merchant or agent, etc.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

*Of the Receiving of Stolen Property.*

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Imprisonment of either description for 8 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
413	Habitually dealing in stolen property.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
414	Assisting in concealment or disposal of stolen property knowing it to be stolen.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 8 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

*Of Cheating.*

417	Cheating ...	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
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418	Cheating a person whose Ditto interest the offender was bound, either by law or by legal contract, to protect.	...	...Ditto	...	...
419	Cheating by perjury ... May arrest without Ditto warrant.	...	...Ditto	...	...Ditto
420	Cheating and thereby dis- honestly inducing delivery of property, or the mak- ing, alteration or destruc- tion of a valuable secu- rity.	...	...Ditto	...	...Imprisonment of either Court of Session, Pres- dency Magistrate or Magistrate of the first or second class. ...Ditto. ...Imprisonment of either Court of Session, Pres- dency Magistrate or Magistrate of the first class.

## Of Fraudulent Deeds and Disposition of Property.

421	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	... Shall not arrest Warrant without warrant.	...	... Bullable ...	... Not able.	... compound. Imprisonment of either Presidency Magistrate or for 2 years, Magistrate of the first or second class.
422	Fraudulently preventing Ditto from being made available for his creditors a debt or demand due to the offender.	... Ditto	...	... Ditto	... Ditto	Ditto
423	Fraudulent execution of Ditto deed of transfer containing a false statement of consideration.	... Ditto	...	... Ditto	... Ditto	Ditto.
424	Fraudulent removal or concealment of property, of himself, or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	... Ditto	...	... Ditto	... Ditto	Ditto

### Of Mischief.

426	Mischief ... ..	... Shall not arrest Summons without warrant.	... Bailable ...	... Compo u n d a b i e Imprisonment of either Any Magistrate. when the only description for loss or damage months, or fine, or caused is loss or both.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	... Warrant ...	... Ditto ...	... Imprisonment of either Presidency Magistrate or description for 2 years, Magistrate of the first or second class.

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—continued.

## Of Mischief.—concluded.

1	2	3	4	5	6	7	8
438	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant.	...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
439	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value or any other animal of the value of 50 rupees or upwards.	Ditto	...	Ditto	Ditto	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
440	Mischief by causing diminution of supply of water for agricultural purposes, etc.	Ditto	...	Ditto	Compoundable when permission is given by the Court before which the prosecution is pending.	...	Ditto.
441	Mischief by injury to public road, bridge, navigable river, or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	Ditto	...	Ditto	Not compoundable.	...	Ditto.
442	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto	...	Ditto	Ditto	...	Ditto.
443	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto	...	Ditto	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
444	Mischief by destroying or moving, etc., a hand-mark fixed by public authority.	Shall not arrest without warrant.	...	Ditto	Ditto	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	...	...	...	Ditto	...	...	...	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class.
436	Mischief by fire or explosive substance with intent to destroy a house, etc.	...	...	...	Ditto	...	...	...	Transportation for life, or Court of Session.
437	Mischief with intent to destroy of make unsafe a detached vessel or a vessel of 20 tons burden.	...	...	...	Ditto	...	...	...	Imprisonment of either description for 10 years, and fine.
438	The mischief described in Ditto the last section when committed by fire or any explosive substance.	...	...	...	Ditto	...	...	...	Imprisonment of either description for 10 years, and fine.
439	Running vessel ashore with intent to commit theft, etc.	...	...	...	Ditto	...	...	...	Transportation for life, or imprisonment of either description for 10 years, and fine.
440	Mischief committed after preparation made for causing death, or hurt, etc.	...	...	...	Ditto	...	...	...	Imprisonment of either description for 10 years, and fine.

## Of Criminal Trespass.

447	Criminal trespass ...	...	...	...	May arrest without summons or warrant.	...	...	...	...	...	...	...	...	...	...	...	...	...	Imprisonment of either Any Magistrate.
448	House-trespass ...	...	...	...	Ditto	...	...	...	...	...	...	...	...	...	...	...	...	...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.
449	House-trespass in order to the commission of an offence punishable with death.	...	...	...	Ditto	...	...	...	...	...	...	...	...	...	...	...	...	...	Imprisonment of either description for one year, or fine of 1,000 rupees, or both.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	...	...	...	Ditto	...	...	...	...	...	...	...	...	...	...	...	...	...	Transportation for life, or Court of Session.
451	House-trespass in order to the commission of an offence punishable with imprisonment	...	...	...	Ditto	...	...	...	...	...	...	...	...	...	...	...	...	...	Imprisonment of either description for 10 years, and fine.



CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—*continued.*  
*Of Criminal Trespass.—concluded.*

1	2	3	4	5	6	7	8
		May arrest without warrant.	...	Not bailable	...Not able.	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	
451	If the offence is theft	...	...	...	...	...	
452	House-trespass, having made preparation for causing hurt, assault, etc.	...	Ditto	Ditto	Ditto	Ditto	Ditto.
453	Lurking house-trespass or house-breaking.	...	Ditto	Ditto	Ditto	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	...	Ditto	Ditto	Ditto	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.	...	Ditto	Ditto	Ditto	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	
456	Lurking house-trespass or house-breaking by night.	...	Ditto	Ditto	Ditto	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	...	Ditto	Ditto	Ditto	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	
458	If the offence is theft	...	Ditto	Ditto	Ditto	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	
459	Lurking house-trespass or house-breaking by night after preparation made for causing hurt, etc.	...	Ditto	Ditto	Ditto	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first or second class.	



CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.—*concluded.*

1	2	3	4	5	6	7	8
	When the forged document is a promissory note of the Central Government.	May arrest without warrant.	Warrant	...	Bailable ...	Not compoundable.	Punishment for forgery Court of Session.
471							
472	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 7 years, and fine.
473	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, and fine.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto	Ditto	...	Ditto	...	Ditto.
475	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 7 years, and fine.
476	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	Ditto	...	Ditto	...	Ditto.

476	Counterfeiting a device or Ditto mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	...	...	...	...	Not bailable	...	Ditto	...	...	Imprisonment of either description for 7 years, and fine.	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or securing a will, etc.	...	...	...	...	Ditto	...	Ditto	...	...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
477A	Falsification of accounts	...	...	...	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
<i>Of Trade and Property Marks.</i>												
482	Using a false trade or pro- Shall not arrest Warrant party mark with intent to deceive or injure any person.	...	...	...	...	...	...	...	...	...	...	...
483	Counterfeiting a trade or Ditto property mark used by another, with intent to cause damage or injury.	...	...	...	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
484	Counterfeiting a property Ditto mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc., of any property.	...	...	...	...	...	...	...	...	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
485	Fraudulently making or Ditto having possession of any die, plate or other instrument for counterfeiting any public or private property or trade-mark.	...	...	...	...	...	...	...	...	...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
486	Knowing selling goods Ditto marked with a counterfeit property or trade-mark.	...	...	...	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

## CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.—concluded.

*Of Trade and Property Marks.—concluded.*

1	2	3	4	5	6	7	8
487	Fraudulently making a false mark upon any package or receptacle containing goods with intent to cause it to be believed that it contains goods which it does not contain, &c.	Shall not arrest without warrant.	...	Bailable ...	...Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
488	Making use of any such false mark.	Ditto	...	Ditto	...	Ditto	Ditto
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto	...	Ditto	...	Imprisonment of either description for one year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

*Of Currency-Notes and Bank-Notes.*

489A	Counterfeiting currency-notes or bank-notes.	May arrest without warrant.	...	Not bailable	...Not compoundable.	Transportation for life or imprisonment of either description for 10 years, and fine.	Court of Session.
489B	Using as genuine forged or counterfeit currency-notes or bank-notes.	Ditto	...	Ditto	...	Transportation for life or imprisonment of either description for 10 years, and fine.	Ditto.
489C	Possession of forged or counterfeit currency-notes or bank-notes.	Ditto	...	Bailable ...	...	Imprisonment of either description for 7 years, or fine, or both	Ditto.
489D	Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.	Ditto	...	Not bailable	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

## CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey or to convey or guard any property or person and voluntarily emitting to do so.	Shall not arrest without warrant.	...	Bailable ...	...Compoundable	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
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491	Being bound to attend on Ditto or supply the wants of a person who is helpless from youth, unconsciousness of mind or disease, and voluntarily omitting to do so.	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
492	Being bound by contract to render personal service for a certain period at a distant place to which the employee is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	...	Ditto	...	Ditto	...	Ditto	...	Court of Session.
494	Marrying again during the life-time of a husband or wife.	...	Ditto	...	Ditto	...	Ditto	...	Court of Session, Presidency Magistrate or Magistrate of the first class.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	...	Ditto	...	Ditto	...	Ditto	...	Court of Session.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
497	Adultery	...	Ditto	...	Ditto	...	Ditto	...	Court of Session, Presidency Magistrate or Magistrate of the first class.
498	Existing or taking away or detaining with a criminal intent a married woman.	...	Ditto	...	Ditto	...	Ditto	...	Presidency Magistrate or Magistrate of the first or second class.

## CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

## CHAPTER XXI.—DEFAMATION.

1	2	3	4	5	6	7	8
800	Defamation ...	Shall not arrest without warrant.	...	... Bailable ...	... Compoundable ...	Simple Imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class. Ditto.
801	Printing or engraving matter knowing it to be defamatory.	...	... Ditto	... Ditto	... Ditto	... Ditto	...
802	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	...	... Ditto	... Ditto	... Ditto	... Ditto	... Ditto.

## CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

804	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	...	... Bailable ...	... Compoundable ...	Imprisonment of either Any Magistrate, description for 2 years, or fine, or both.	...
805	Falsely statement, rumour, etc., circulated with intent to cause mutiny or offence against the public peace.	...	... Ditto	... Not bailable	... Not compoundable.	... Ditto	... Presidency Magistrate or Magistrate of the first class.
806	Criminal intimidation	...	... Ditto	... Bailable ...	... Compoundable ...	... Ditto	... Presidency Magistrate or Magistrate of the first or second class.
807	Threat to cause death or grievous hurt, etc.	...	... Ditto	... Ditto	... Not compoundable.	Imprisonment of either Court of Session, Presidency Magistrate or Magistrate of the first class.	...
807	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat came.	...	... Ditto	... Ditto	... Ditto	Imprisonment of either description for 2 years, in addition to the punishment under above section.	... Ditto.
808	Act accused by inducing a person to believe that he will be rendered an object of Divine displeasure.	...	... Ditto	... Ditto	... Compoundable ...	Imprisonment of either description for 1 year, or fine, or both.	... Presidency Magistrate or Magistrate of the first or second class.
809	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	...	... Ditto	... Ditto	... Compoundable ...	Simple Imprisonment for 1 year, or fine, or both.	... Presidency Magistrate or Magistrate of the first class.

510 Appearing in a public place, Ditto  
etc., in a state of intoxica-  
tion, and causing annoy-  
ance to any person.

... Ditto ... Not  
able.

... compound-Simple imprisonment for Any Magistrate.  
24 hours or fine of 10  
rupees, or both.

CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.

511 Attempting to commit According as the According as the Compoundable Transportation or imple- The Court by which the  
offences punishable with offence is one in offence contem- sonment not exceeding offence attempted is  
transportation or imple- respect of which respect of which the attempted is half of the longest term, or  
sonment, and in such at- a summons or war- offender is bail- compoundable. and of any description, provided for the offence,  
tempt doing any act to- rant shall ordinar- able or not. or fine, or both.

OFFENCES AGAINST OTHER LAWS.

If punishable with death, May arrest without Warrant ...	... Not bailable	... Not compound- able.	.....	Court of Session.
transportation or imple- sonment for 7 years or upwards.				
If punishable with imple- sonment for 8 years and upwards, but less than 7.	... Ditto	... Ditto	.....	Court of Session, Pres- dency Magistrate or Magistrate of the first class.
	... Except in cases under the Indian Arms Act, 1876, section 19, which shall be bailable.	... Ditto	.....	
If punishable with imple- sonment for 1 year and upwards, but less than 8 years.	... Shall not arrest without warrant.	... Summons ...	... Ditto	Court of Session, Pres- dency Magistrate or Magistrate of the first or second class.
If punishable with imple- sonment for less than 1 year, or with fine only.	... Ditto	... Ditto	.....	Any Magistrate.



## SCHEDULE III.

(See section 36.)<sup>f</sup>

## ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

*I.—Ordinary Powers of a Magistrate of the Third Class.*

- (1) Power to arrest or direct the arrest of, and to commit to custody, a person committing an offence in his presence, section 64.
- (2) Power to arrest, or direct the arrest in his presence of, an offender, section 65.
- (3) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 81, 84 and 86.
- (4) Power to issue proclamations in cases judicially before him, section 87.
- (5) Power to attach and sell property and to dispose of claims to attached property in cases judicially before him, section 88.
- (6) Power to restore attached property, section 89.
- (7) Power to require search to be made for letters and telegrams, section 95.
- (8) Power to issue search-warrant, section 96.
- (9) Power to endorse a search-warrant and order delivery of thing found, section 99.
- (10) Power to command unlawful assembly to disperse, section 127.
- (11) Power to use civil force to disperse unlawful assembly, section 128.
- (12) Power to require military force to be used to disperse unlawful assembly, section 130.
- (13) [Omitted.]
- (14) Power to authorize detention not being detention in the custody of the police of a person during a police investigation, section 167.
- (14a) Power to postpone issue of process and inquire into case himself, section 202.
- (15) Power to detain an offender found in court, section 351.
- (16) [Omitted.]
- (17) Power to apply to District Magistrate to issue commission for examination of witness, section 506(2).
- (18) Power to recover forfeited bond for appearance before Magistrate's Court, section 514 and to require fresh security, section 514A.
- (18a) Power to make order as to custody and disposal of property pending inquiry or trial, section 516A.
- (19) Power to make order as to disposal of property, section 517.
- (20) Power to sell property of a suspected character, section 525.
- (21) Power to require affidavit in support of application, section 530A.
- (22) Power to make local inspection, section 539B.

*II.—Ordinary Powers of a Magistrate of the Second Class.*

- (1) The ordinary powers of a Magistrate of the third class.
- (2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.
- (3) Power to postpone issue of process and to inquire into a case or direct investigation, section 202.
- (4) [Omitted.]

*III.—Ordinary Powers of a Magistrate of the First Class.*

- (1) The ordinary powers of a Magistrate of the second class.
- (2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
- (3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
- (4) Power to require security to keep the peace, section 107.
- (5) Power to require security for good behaviour, section 109.
- (6) Power to discharge sureties, section 126A.
- (6a) Power to make orders as to local nuisances, section 183.
- (7) Power to make orders, etc., in possession cases, sections 145, 146 and 147.
- (7a) Power to record statements and confessions during a police investigation, section 164.
- (7aa) Power to authorise detention of a person in the custody of the police during a police investigation, section 167.
- (7b) Power to hold inquests, section 174.
- (8) Power to commit for trial, section 204.
- (9) Power to stop proceedings when no complainant, section 240.
- (9a) Power to tender pardon to accomplice during inquiry into case by himself, section 337.
- (10) Power to make orders of maintenance, section 488 and 489.
- (11) Power to take evidence on commission, section 503.
- (12) Power to recover penalty on forfeited bond, section 514.
- (12a) Power to require fresh security, section 514A.
- (12b) Power to re-call case made over by him to another Magistrate, section 528 (4).
- (13) Power to make order as to first offenders, section 532.
- (14) Power to order released convicts to notify residence, section 565.

#### *IV.—Ordinary Powers of a Sub-divisional Magistrate appointed under section 13.*

The ordinary powers of a Magistrate of the first class.

Power to direct warrants to landholders, section 78.

Power to require security for good behaviour, section 110.

Power to make orders prohibiting repetitions of nuisances, section 143.

Power to make orders under section 144.

Power to depute Subordinate Magistrate to make local inquiry, section 148.

(8) Power to order police investigation into cognisable cases, section 156.

(9) Power to receive report of police-officer and pass order, section 178.

(10) [Omitted.]

(11) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.

(12) Power to entertain complaints, section 190.

(13) Power to receive police-reports, section 190.

(14) Power to entertain cases without complaint, section 190.

(15) Power to transfer cases to a Subordinate Magistrate, section 192.

(16) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.

(17) Power to forward record of inferior Court to District Magistrate, section 435 (2).

(18) Power to sell property alleged or suspected to have been stolen, etc., section 524.

(19) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.

(20) [Omitted.]

#### *V.—Ordinary Powers of a District Magistrate.*

(1) The ordinary powers of a Sub-divisional Magistrate.

(1a) Power to try juvenile offenders, section 20B.

(2) Power to require delivery of letters, telegrams, etc., section 95.

(3) Power to issue search-warrants for documents in custody of postal or telegraph authority, section 96.

(4) Power to require security for good behaviour in case of sedition, section 108.

(5) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.

(6) Power to cancel bond for keeping the peace, section 125.

(6a) Power to order preliminary investigation by police-officer not below the rank of Inspector in certain cases, section 196B.

(7) Power to try summarily, section 260.

(7a) Power to tender pardon to accomplice at any stage of a case, section 387.

(8) Power to quash convictions in certain cases, section 350.

(9) Power to hear appeals from orders requiring security for keeping the peace or good behaviour, section 406.

(9a) Power to hear appeals from orders of Magistrates refusing to accept or rejecting sureties, section 406A.

(10) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.

(11) Power to call for records, section 435.

(12) Power to order inquiry into complaint dismissed or case of accused discharged, section 436.

(13) Power to order commitment, section 437.

(14) Power to report case to High Court, section 438.

(15) [Omitted.]

(16) [Omitted.]

(17) Power to appoint person to be Public Prosecutor in particular case, section 492 (2).

(18) Power to issue commission for examination of witness, section 508, 509.

(19) Power to hear appeals from or revise orders passed under sections 514, 515.

(20) Power to compel restoration of abducted female, section 552.

## SCHEDULE IV.

(See sections 37 and 38.)

## ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES

## MAY BE INVESTED.

POWERS WITH  
WHICH A MA-  
GISTRATE OF  
THE FIRST  
CLASS MAY BE  
INVESTED.BY THE PROVINCIAL  
GOVERNMENT.

- (1) Power to require security for good behaviour in case of sedition, section 108; . . .
- (2) Power to require security for good behaviour, section 110;
- (3) [Omitted];
- (4) Power to make orders prohibiting repetitions of nuisances, section 143;
- (5) Power to make orders under section 144;
- (6) [Omitted];
- (7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186;
- (8) Power to take cognizance of offences upon complaint, section 190;
- (9) Power to take cognizance of offences upon police reports, section 190;
- (10) Power to take cognizance of offences without complaint, section 190;
- (11) Power to try summarily, section 200;
- (12) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407;
- (13) Power to sell property alleged or suspected to have been stolen, etc., section 524;
- (14) [Omitted];
- (15) Power to try cases under section 124A of the Indian Penal Code.

BY THE DISTRICT  
MAGISTRATE.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143;
- (2) Power to make orders under section 144;
- (3) [Omitted];
- (4) Power to take cognizance of offences upon complaint, section 190;
- (5) Power to take cognizance of offences upon police reports, section 190;
- (6) Power to transfer cases, section 192;

BY THE PROVINCIAL  
GOVERNMENT.

- (1) [Repealed];
- (2) Power to make orders, prohibiting repetitions of nuisances, section 143;
- (3) Power to make orders under section 144;
- (3a) Power to record statements and confessions during a police investigation, section 164;
- (3b) Power to authorize detention of a person in the custody of the police during a police investigation, section 187;
- (4) Power to hold inquests, section 174;
- (5) Power to take cognizance of offences upon complaint, section 190;
- (6) Power to take cognizance of offences upon police reports, section 190;
- (7) Power to take cognizance of offences without complaint, section 190;
- (8) Power to commit for trial, section 206;
- (9) Power to make order as to first offenders, section 562.

POWERS WITH  
WHICH A MA-  
GISTRATE OF  
THE SECOND  
CLASS MAY BE  
INVESTED.BY THE DISTRICT  
MAGISTRATE.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143;
- (2) Power to make orders under section 144;
- (3) Power to hold inquests, section 174;
- (4) Power to take cognizance of offences upon complaint, section 190;
- (5) Power to take cognizance of offences upon police reports, section 190;

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED.	BY THE PROVINCIAL GOVERNMENT.	(1) Power to make orders prohibiting repetitions of nuisances, section 148 : (2) [Omitted :] (3) Power to hold inquests, section 174 : (4) Power to take cognisance of offences upon complaint, section 190 : (5) Power to take cognisance of offences upon police reports, section 190 : (6) [Omitted :]
	BY THE DISTRICT MAGISTRATE.	(1) Power to make orders prohibiting repetitions of nuisances, section 148 : (2) [Omitted :] (3) Power to hold inquests, section 174 : (4) Power to take cognisance of offences upon complaint, section 190 : (5) Power to take cognisance of offences upon police reports, section 190.
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED.	BY THE PROVINCIAL GOVERNMENT.	Power to call for records, section 435.

## SCHEDULE V.

(See section 555.)

### FORMS.

#### I.—SUMMONS TO AN ACCUSED PERSON.

(See section 65.)

To \_\_\_\_\_ of \_\_\_\_\_  
 WHEREAS your attendance is necessary to answer to a charge of *(state shortly the offence charged)*,  
 you are hereby required to appear in person *(or by pleader, as the case may be)* before the *(Magistrate)*  
 of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ Herein fail not.  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
 (Seal.) \_\_\_\_\_ (Signature.)

#### II.—WARRANT OF ARREST.

(See section 75.)

To *(name and designation of person or persons who is or are to execute the warrant.)*  
 WHEREAS \_\_\_\_\_ of \_\_\_\_\_ stands charged  
 with the offence of *(state the offence)*, you are hereby directed to arrest the said \_\_\_\_\_  
 , and to produce him before me. Herein fail not.  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
 (Seal.) \_\_\_\_\_ (Signature.)

(See section 76.)

*This warrant may be endorsed as follows :—*  
 If the said \_\_\_\_\_ shall give bail himself in the sum of \_\_\_\_\_, with one  
 surety in the sum of \_\_\_\_\_ *(or two sureties each in the sum of \_\_\_\_\_)*  
 to attend before me on the \_\_\_\_\_ day of \_\_\_\_\_ and to continue  
 so to attend until otherwise directed by me, he may be released.  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
 \_\_\_\_\_ (Signature.)

#### III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(See section 86.)

I *(name)*, of \_\_\_\_\_, being brought before the District Magistrate of \_\_\_\_\_  
*(or as the case may be)* under a warrant issued to compel my appearance to answer to the charge  
 of \_\_\_\_\_, do hereby bind myself to attend in the Court of \_\_\_\_\_  
 on the \_\_\_\_\_ day of \_\_\_\_\_ next, to answer to the said charge,  
 and to continue so to attend until otherwise directed by the Court; and, in case of my making  
 default herein, I bind myself to forfeit, to Her Majesty the Queen, Empress of India, the sum of  
 rupees \_\_\_\_\_  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
 \_\_\_\_\_ (Signature.)

I do hereby declare myself surety for the abovenamed of  
that he shall attend before in the Court of on the day  
of next, to answer to the charge on which he has been arrested, and  
shall continue so to attend until otherwise directed by the Court; and, in case of his making default  
therein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of 18 .  
(Signature),

#### IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(See section 87.)

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found, and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said of is required to appear at (place) before this Court (or before me) to answer the said complaint on the day of .

Dated this day of 18 .  
(Seal.) (Signature).

#### V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(See section 87.)

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of (mention the offence concisely) and a warrant has been issued to compel the attendance of (name, description and address of the witness) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (name of witness) cannot be served, and it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said (name) is required to appear at (place) before the Court of on the day of next at o'clock to be examined touching, the offence complained of.

Dated this day of 18 .  
(Seal.) (Signature.)

#### VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(See section 88.)

To the Police-officer in charge of the Police-station at

WHEREAS a warrant has been duly issued to compel the attendance of (name, description and address) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation has been or is being duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein,.....;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees which you may find within the District of and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .  
(Seal.) (Signature.)

#### ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(See section 88.)

To (name and designation of the person or persons who is or are to execute the warrant).

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found; and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation has been or is being duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (or town) of in the District of vis., and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .  
(Seal.) (Signature.)

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(See section 88.)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found; and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant) and thereupon a Proclamation has been or is being duly issued and published requiring the said to appear to answer the said charge within days,.....; and whereas the said is possessed of certain land paying revenue to Government in the village (or town) of in the District of

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this

day of

18 .

(Seal.)

(Signature.)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(See section 90.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant.)

WHEREAS complaint has been made before me that of has (or is suspected to have) committed the offence of (mention the offence concisely), and it appears likely that (name, and description of witness) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorize and require you to arrest the said (name), and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of 18 .

(Seal.)

(Signature.)

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(See section 96.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant.)

WHEREAS information has been laid (or complaint has been made) before me of the commission (or suspected commission) of the offence of (mention the offence concisely), and it has been made to appear to me that the production of (specify the thing clearly) is essential to the inquiry now being made (or about to be made) into the said offence or suspected offence;

This is to authorize and require you to search for the said (the thing specified) in the (describe the house or place or part thereof to which the search is to be confined) and, if found, to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this

day of

18 .

(Seal.)

(Signature.)

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(See section 98.)

To (name and designation of a Police-officer above the rank of a Constable.)

WHEREAS information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (describe the house or other place) is used as a place for the deposit (or sale) of stolen property (or if for either of the other purposes expressed in the section, state the purpose in the words of the section);

This is to authorize and require you to enter the said house (or other place) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (or other place, or if the search is to be confined to a part, specify the part clearly) and to seize and take possession of any property (or documents, or stamps, or seals, or coins, or obscene objects, as the case may be)—[Add (when the case requires it) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false sales, or counterfeit coin (as the case may be)], and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this

day of

18 .

(Seal.)

(Signature.)

X.—BOND TO KEEP THE PEACE.

(See section 107.)

WHEREAS I (name), inhabitant of (place), have been called upon to enter into a bond to keep the peace for the term of , or until the completion of the inquiry in the matter of now pending in the Court of , I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term or

until the completion of the said inquiry and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
(Signature.)

#### XI.—BOND FOR GOOD BEHAVIOUR.

(See sections 108, 109 and 110.)

WHEREAS I (name) inhabitant of (place), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all Her subjects for the term of (state the period) or until the completion of the inquiry in the matter of \_\_\_\_\_ now pending in the Court of \_\_\_\_\_

I hereby bind myself to be of good behaviour to Her Majesty and to all Her subjects during the said term or until the completion of the said inquiry; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
(Signature.)

(Where a bond with sureties is to be executed, add,)—We do hereby declare ourselves sureties for the abovesigned \_\_\_\_\_ that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all Her subjects during the said term or until the completion of the said inquiry; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
(Signature.)

#### XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(See section 114.)

To \_\_\_\_\_ of \_\_\_\_\_ WHEREAS it has been made to appear to me by credible information that (state the substance of the information), and that you are likely to commit a breach of the peace (or by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (or by a duly authorized agent) at the Office of the Magistrate of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

18 ., at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees \_\_\_\_\_ (when sureties are required, add, and also to give security by the bond of one (or two, as the case may be) surety (or sureties) in the sum of rupees \_\_\_\_\_ (each if more than one) ) that you will keep the peace for the term of \_\_\_\_\_

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
(Seal.) (Signature.)

#### XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(See section 123.)

To the Superintendent (or Keeper) of the Jail at \_\_\_\_\_

WHEREAS (name and address) appeared before me in person (or by his authorized agent) on the \_\_\_\_\_ day of \_\_\_\_\_ in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees \_\_\_\_\_ with one surety (or a bond with two sureties each in rupees \_\_\_\_\_), that he, the said (name), would keep the peace for the period of \_\_\_\_\_ months; and whereas an order was then made requiring the said (name) to enter into and find such security (state the security ordered when it differs from that mentioned in the summons) and he has failed to comply with the said order;

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment) unless he shall in the meantime be lawfully ordered to be released and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
(Seal.) (Signature.)

#### XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(See section 123.)

To the Superintendent (or Keeper) of the Jail at \_\_\_\_\_

WHEREAS it has been made to appear to me that (name and description) has been and is lurking within the district of \_\_\_\_\_ having no ostensible means of subsistence (or, and that he is unable to give any satisfactory account of himself);

or  
WHEREAS evidence of the general character of (name and description) has been adduced before me and recorded, from which it appears that he is an habitual robber (or house-breaker, etc., as the case may be);

And whereas an order has been recorded stating the same and requiring the said (name) to furnish security for his good behaviour for the term of (state the period) by entering into a bond with one surety (or two or more sureties, as the case may be), himself for rupees \_\_\_\_\_

and the said surety (or each of the said sureties) for rupees \_\_\_\_\_ and the said (name) has failed to comply with the said order and for such default has been adjudged imprisonment for (state the term) unless the said security be sooner furnished;





## XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(See section 140.)

To (name, description and address).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of 18, have found that the order issued on the day of requiring you (state substantially the requisition in the order) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (state the time allowed), on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of 18.

(Seal.)

(Signature.)

## XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.

(See section 142.)

To (name, description and address).

WHEREAS the inquiry by a Jury appointed to try whether my order issued on the day of 18, is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (state plainly what is required to be done as a temporary safeguard), pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this day of 18.

(Seal.)

(Signature.)

## XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, ETC., OF A NUISANCE.

(See section 143.)

To (name, description and address).

WHEREAS it has been made to appear to me that, etc., (state the proper recital, guided by Form No. XVI or Form No. XXI, as the case may be);

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, etc., (as the case may be).

Given under my hand and the seal of the Court, this day of 18.

(Seal.)

(Signature.)

## XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, ETC.

(See section 144.)

To (name, description and address).

WHEREAS it has been made to appear to me that you are in possession (or have the management) of (describe clearly the property)? and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or  
WHEREAS it has been made to appear to me that you and a number of other persons (mention the class of persons) are about to meet and proceed in a religious procession along the public street, etc., (as the case may be), and that such procession is likely to lead to a riot or an affray;

or  
WHEREAS, etc., etc., (as the case may be);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from land on any part of the said road;

or  
I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (or as the case recited may require).

Given under my hand and the seal of the Court, this day of 18.

(Seal.)

(Signature.)

## XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, ETC., IN DISPUTE.

(See section 145.)

It appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (describe the parties by name and residence, or residence only if the dispute be between bodies of villagers) concerning certain (state concisely the subject of dispute), situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (the subject of dispute), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (name or names or description) is true;



## XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE TO GOVERNMENT PLEADER.

(See section 218.)

THE MAGISTRATE of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, etc. (state the offence as in the charge).  
Dated this day of 18 . . .

(Signature.)

## XXVIII.—CHARGES.

(See sections 221, 222, 223.)

## (I) CHARGES WITH ONE HEAD.

(a) I, [name and office of Magistrate, etc.], hereby charge you [name of accused person] as follows :—  
(b) that you, on or about the day of , at  
On Penal Code, waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [when the charge is framed by a Presidency Magistrate, for Court of Session substitute High Court.]

(c) And I hereby direct that you be tried by the said Court on the said charge.  
[Signature and seal of the Magistrate.]

(To be substituted for (b)) :—

(2) That you, on or about the day of , at  
On section 124. , with the intention of inducing the Hon'ble A. B., Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

(3) That you, being a public servant in the Department, directly accepted from [state the name], for another party [state the name] a gratification other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

(4) That you, on or about the day of , at  
On section 166. did [or omitted to do, as the case may be] , such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

(5) That you, on or about the day of , at  
On section 193. in the course of the trial of , before , stated in evidence that " " which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

(6) That you, on or about the day of , at  
On section 304. committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

(7) That you, on or about the day of , at  
On section 306. abetted the commission of suicide by A. B., a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

(8) That you, on or about the day of , at  
On section 325. voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

(9) That you, on or about the day of , at  
On section 392. robbed [state the name], and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

(10) That you, on or about the day of , at  
On section 395. committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

[If cases tried by Magistrate substitute "within my cognizance" for "within the cognizance of the Court of Session," and in (c) omit "by the said Court".]

## (II) CHARGES WITH TWO OR MORE HEADS.

(a) I, [name and office of Magistrate, etc.], hereby charge you [name of accused person] as follows :—

(b) First.—That you, on or about the day of , at  
On section 241. knowing a coin to be counterfeit, delivered by same to another person, by name A. B., as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

*Secondly.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(c) And I hereby direct that you be tried by the said Court on the said charge.

(Signature and seal of the Magistrate.)

[To be substituted for (b) ]:—

(2) *First.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed murder by causing the death of \_\_\_\_\_, and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Secondly.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, by causing the death of \_\_\_\_\_, committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(3) *First.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Secondly.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Thirdly.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 383 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Fourthly.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 383 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(4) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the course of the inquiry into \_\_\_\_\_, before \_\_\_\_\_, stated in evidence that "\_\_\_\_\_", and that you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the course of the trial of \_\_\_\_\_, before \_\_\_\_\_, stated in the evidence that "\_\_\_\_\_", one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

[In cases tried by Magistrate substitute "within my cognizance" for "within the cognizance of the Court of Session" and in (c) omit "by the said Court."]

### (III) CHARGE FOR THEFT AFTER PREVIOUS CONVICTION.

I, [name and office of Magistrate, etc.], hereby charge you (name of accused person) as follows:—  
That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court] \_\_\_\_\_ as the case may be].

And you, the said (name of accused), stand further charged that you, before the committing of the said offence, that is to say, on the \_\_\_\_\_ day of \_\_\_\_\_, had been convicted by the (state Court by which conviction was had) at \_\_\_\_\_ of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (describe the offence in the words used in the section under which the accused was convicted), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, etc.

### XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED, BY A MAGISTRATE.

(See sections 245 and 253.)

To the Superintendent (or Keeper) of the Jail at \_\_\_\_\_

WHEREAS on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. \_\_\_\_\_ of the Calendar for 18 \_\_\_\_ was convicted before me (name and official designation) of the offence of (mention the offence or offences concisely) under section (or sections) \_\_\_\_\_ of the Indian Penal Code (or of Act \_\_\_\_\_), and was sentenced to (state the punishment fully and distinctly);

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (prisoner's name) into your custody in the said Jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_

(Seal.)

(Signature.)

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY  
ATTACHMENT AND SALE.

(See section 250.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS (name and description) has brought against (name and description of the accused person) the complaint that (mention it concisely) and the same has been dismissed as false and frivolous (or vexatious), and the order of dismissal awards payment by the said (name of complainant) of the sum of rupees as amend; and whereas the said sum has not been paid and an order has been made for his simple imprisonment in Jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof, forthwith to let him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of  
(Seal.)

18  
(Signature.)

XXXI.—SUMMONS TO WITNESS.

(See sections 69 and 258.)

To

of

WHEREAS complaint has been made before me that of has (or is suspected to have) committed the offence of (state the offence concisely with time and place), and it appears to me that you are likely to give material evidence for the prosecution;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that, if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of  
(Seal.)

18  
(Signature.)

XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(See section 326.)

To the District Magistrate of

WHEREAS a Criminal Session is appointed to be held in the Court-house at next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of Jurors and Assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A.M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(Here enter the names of Jurors and Assessors.)

Given under my hand and the seal of the Court, this day of  
(Seal.)

18  
(Signature.)

XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(See section 328.)

To (name) of (place).

PURSUANT to a precept directed to me by the Court of Session of requiring your attendance as an Assessor (or a Juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (place) at ten o'clock in the forenoon on the day of next.

Given under my hand and the seal of the Court, this day of  
(Seal.)

18  
(Signature.)

XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(See section 374.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS at the Session, held before me on the day of 18, (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (prisoner's name) into your custody in the said Jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of  
(Seal.)

18  
(Signature.)

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(See section 381.)

To the Superintendent (or Keeper) of the Jail at \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, (name of the \_\_\_\_\_ prisoner) the (1st, 2nd, 3rd, as the case may be) prisoner in case No. \_\_\_\_\_ of the Calendar at the Session held before me on the \_\_\_\_\_ day of \_\_\_\_\_, committed has been by warrant of this Court, dated the \_\_\_\_\_ day of \_\_\_\_\_, to your custody under sentence of death; and whereas the order of the \_\_\_\_\_ Court of \_\_\_\_\_ confirming the said sentence has been received by this Court; This is to authorize and require you, the said Superintendent (or Keeper), to carry the said sentence into execution by causing the said \_\_\_\_\_ to be hanged by the neck until he be dead, at (time and place of execution), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed. Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ (Seal.) (Signature.)

XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(See sections 381 and 382.)

To the Superintendent (or Keeper) of the Jail at \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, (name of the \_\_\_\_\_ prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. \_\_\_\_\_ of the Calendar at the said Session, was convicted of the offence of \_\_\_\_\_ punishable under section \_\_\_\_\_ of the Indian Penal Code, and sentenced to \_\_\_\_\_, and was thereupon committed to your custody; and whereas by the order of the \_\_\_\_\_ Court of \_\_\_\_\_ (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (or as the case may be); This is to authorize and require you, the said Superintendent (or Keeper), safely to keep the said (prisoner's name) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order, or if the mitigated sentence is one of imprisonment, say, after the words, "custody in the said Jail," and there to carry into execution the punishment of imprisonment under the said order according to law." Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ (Seal.) (Signature.)

XXXVII.—WARRANT TO LEVY A FINE BY ATTACHMENT AND SALE.

(See section 386 (2) (a) ).

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant). WHEREAS (name and description of the offender) was on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ convicted before me of the offence of (mention the offence concisely), and sentenced to pay a fine of \_\_\_\_\_ rupees; and whereas the said (name), although required to pay the said fine, has not paid the same or any part thereof; This is to authorize and require you to attach any moveable property belonging to the said (name) which may be found within the district of \_\_\_\_\_; and, if within (state the number of days or hours allowed) next after such attachment the said sum shall not be paid (or forthwith), to sell the moveable property attached, or so much thereof as shall be sufficient to satisfy the said fine, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution. Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ (Seal.) (Signature.)

XXXVIII.—BOND FOR APPEARANCE OF OFFENDER RELEASED PENDING REALISATION OF FINE.

(See section 388.)

WHEREAS I, (name), inhabitant of (place), have been sentenced to pay a fine of rupees \_\_\_\_\_ and in default of payment thereof to undergo imprisonment for \_\_\_\_\_; and whereas the Court has been pleased to order my release on condition of my executing a bond for my appear ance on the following date (or dates) namely:— I hereby bind myself to appear before the Court of \_\_\_\_\_ at \_\_\_\_\_ o'clock on the following date (or dates) namely:— and in case of making default herein, I bind myself to forfeit to His Majesty the King, Emperor of India, the sum of rupees \_\_\_\_\_ Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ (Signature.) Where a bond with sureties is to be executed, add— We do hereby declare ourselves sureties for the abovenamed \_\_\_\_\_ that he will appear before the Court of \_\_\_\_\_ on the following date (or dates) namely:— and, in case of his making default therein, we bind ourselves jointly and severally to forfeit to His Majesty the King, Emperor of India, the sum of rupees \_\_\_\_\_ (Signature.)

**XXXVIII.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.**

(See section 480.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS a Court holden before me on this day (*name and description of the offender*) in the presence (or view) of the Court committed wilful contempt;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*);

This is to authorize and require you, the Superintendent (or Keeper) of the said Jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this  
(Seal.)

day of 18 .  
(Signature.)

**XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER.**

(See section 486.)

To (*name and description of officer of Court*).

WHEREAS (*name and description*), being summoned (or brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (or certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This is to authorize and require you to take the said (*name*) into custody, and him safely to keep in your custody for the space of days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forth-

with on such consent being known, to bring him before this Court to be dealt with according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this  
(Seal.)

day of 18 .  
(Signature.)

**XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.**

(See section 488.)

To the Superintendent (or Keeper) of the jail at

WHEREAS (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [or his child (*name*), who is by reason of (*state the reason*) unable to maintain herself (or himself)], and to have neglected (or refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (or child) for maintenance the monthly sum of rupees ; and whereas it has been further proved

that the said (*name*) in wilful disregard of the said order has failed to pay rupees ; being the amount of the allowance for the month (or months) of ; And thereupon an order was made adjudging him to undergo simple (or rigorous) imprisonment in the said Jail for the period of ;

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (*name*) into your custody in the said Jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this  
(Seal.)

day of 18 .  
(Signature.)

**XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY ATTACHMENT AND SALE.**

(See section 488.)

To (*name and designation of the Police-officer or other person to execute the warrant*).

WHEREAS an order has been duly made requiring (*name*) to allow to his said wife (or child) for maintenance the monthly sum of rupees , and whereas the said (*name*) in wilful disregard of the said order has failed to pay rupees ; being the amount of the allowance for the month (or months) of ;

This is to authorize and require you to attach any moveable property<sup>a</sup> belonging to the said (*name*) which may be found within the district of , and if within (*state the number of days or hours allowed*) next after such attachment the said sum shall not be paid (or forthwith), to sell the moveable property attached, or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this  
(Seal.)

day of 18 .  
(Signature.)

**XLII.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE.**

(See sections 498 and 499.)

I, (name), of (place), being brought before the Magistrate of (as the case may be) charged with the offence of \_\_\_\_\_, and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and, should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
(Signature.)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the said (name) that he shall attend at the Court of \_\_\_\_\_ on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and, in case of his making default therein, I bind myself (or we bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
(Signature.)

**XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY**

(See section 500.)

To the Superintendent (or Keeper) of the Jail at \_\_\_\_\_  
(or other officer in whose custody the person is).

WHEREAS (name and description of prisoner) was committed to your custody under warrant of this Court, dated the \_\_\_\_\_ day of \_\_\_\_\_, and has since with his surety (or sureties) duly executed a bond under section 498 of the Code of Criminal Procedure;

This is to authorize and require you forthwith to discharge the said (name) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
(Seal.) (Signature.)

**XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.**

(See section 514.)

To the Police-officer in charge of the Police-station at \_\_\_\_\_

WHEREAS (name, description and address of person) has failed to appear on (mention the occasion) pursuant to his recognizance, and has by such default forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (the penalty in the bond); and whereas the said (name of person) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorize and require you to attach any moveable property of the said (name) that you may find within the district of \_\_\_\_\_, by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
(Seal.) (Signature.)

**XLV.—NOTICE TO SURETY ON BREACH OF A BOND.**

(See section 514.)

To \_\_\_\_\_ of \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, you became surety for (name) of (place) that he should appear before this Court on the \_\_\_\_\_ day of \_\_\_\_\_ and bound yourself in default thereof to forfeit the sum of rupees \_\_\_\_\_ to Her Majesty the Queen, Empress of India; and whereas the said (name) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees \_\_\_\_\_; You are hereby required to pay the said penalty or show cause, within \_\_\_\_\_ days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
(Seal.) (Signature.)

**XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.**

(See section 514.)

To \_\_\_\_\_ of \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, you became surety by a bond for (name) of (place) that he would be of good behaviour for the period of \_\_\_\_\_ and bound yourself in default thereof to forfeit the sum of rupees \_\_\_\_\_ to Her Majesty the Queen, Empress of India; and whereas the said (name) has been convicted of the offence of (mention the offence concisely) committed since you became such surety, whereby your security bond has become forfeited;



You are hereby required to pay the said penalty of rupees \_\_\_\_\_, or to show cause within \_\_\_\_\_ days why it should not be paid.  
 Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
 (Seal.) (Signature.)

#### **XLVII.—WARRANT OF ATTACHMENT AGAINST A SURETY.**

(See section 514.)

To \_\_\_\_\_ of  
 WHEREAS (name, description and address) has bound himself as surety for the appearance of (mention the condition of the bond), and the said (name) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees \_\_\_\_\_ (the penalty in the bond);

This is to authorize and require you to attach any moveable property of the said (name) which you may find within the district of \_\_\_\_\_, by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
 (Seal.) (Signature.)

#### **XLVIII.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.**

(See section 514.)

To the Superintendent (or Keeper) of the Civil Jail at \_\_\_\_\_

WHEREAS (name and description of surety) has bound himself as a surety for the appearance of (state the condition of the bond) and the said (name) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India; and whereas the said (name of surety) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment, should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for (specify the period);

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody with this warrant and him safely to keep in the said Jail for the said (term of imprisonment), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
 (Seal.) (Signature.)

#### **XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A BOND TO KEEP THE PEACE.**

(See section 514.)

To (name, description and address).

WHEREAS on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_, you entered into a bond not to commit, etc., (as in the bond), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees \_\_\_\_\_, or to show cause before me within \_\_\_\_\_ days why payment of the same should not be enforced against you.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
 (Seal.) (Signature.)

#### **L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.**

(See section 514.)

To (name and designation of Police-officer), at the Police-station of \_\_\_\_\_

WHEREAS (name and description) did on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_, enter into a bond for the sum of rupees \_\_\_\_\_ binding himself not to commit a breach of the peace, etc., (as in the bond), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (name) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (name) to the value of rupees \_\_\_\_\_ which you may find within the district of \_\_\_\_\_ and if the said sum be not paid within \_\_\_\_\_, to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
 (Seal.) (Signature.)

#### **LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.**

(See section 514.)

To the Superintendent (or Keeper) of the Civil Jail at \_\_\_\_\_

WHEREAS proof has been given before me and duly recorded that (name and description) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees \_\_\_\_\_; and whereas the said,

(name) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (name) in the Civil Jail for the period of (term of imprisonment).

This is to authorize and require you, the said Superintendent (or Keeper) of the said Civil Jail, to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment), and to return that warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this

day of

18 .

(Seal.)

(Signature.)

LII.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(See section 514.)

To the Police-officer in charge of the Police-station at

WHEREAS (name, description and address) did, on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (name, etc., of the principal) and proof has been given before me and duly recorded of the commission by the said (name) of the offence of whereby the said bond has been forfeited; and whereas notice has been given to the said (name) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (name) to the value of rupees which you may find within the district of and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this

day of

18 .

(Seal.)

(Signature.)

LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(See section 514.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS (name, description and address) did, on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (name, etc., of the principal), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (name) has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees , and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid although duly called upon to do so, and payment thereof cannot be enforced attachment of his moveable property, and an order has been made for the imprisonment of the said by (name) in the Civil Jail for the period of (term of imprisonment);

This is to authorize and require you, the Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment), returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this

day of

18 .

(Seal.)

(Signature.)

## S U M M A R Y .

BEFORE the establishment of Courts of criminal and civil justice by the East India Company, the Mahomedan power had its own criminal law. In the beginning the Courts were guided, in criminal matters, by the Mahomedan criminal law. In 1773 the British Parliament enacted the Regulating Act,<sup>1</sup> which provided for the form of government in India. A Supreme Court was established in Calcutta, and later on such Court was established in Madras in 1800, and in Bombay in 1823. In 1781 another statute was passed recognizing provincial Courts independent of the Supreme Court, and investing the Governor General in Council with appellate jurisdiction and with power to frame Regulations for these Courts. Regulations applicable to Bengal were passed by the Governor General in Council, and those applicable to the Madras Presidency by the Governor in Council of Fort St. George, and to the Bombay Presidency by the Governor in Council of Bombay. Legislation by Regulations continued up to 1834. The Supreme Courts mostly applied English law and procedure in matters civil and criminal. The mofussil Courts were guided by the Regulations of Government, and when there was no Regulation they proceeded according to justice, equity and good conscience.

In 1833 the Governor General in Council was empowered by 3 & 4 Will. IV, c. 85, to legislate for the whole of British India, i.e., for all persons whether British or native or foreigners; for all Courts established by Charter or otherwise; for all places within the territories of British India. The Regulations made under the previous statutes were replaced by Acts. This statute provided for the appointment of the "Indian Law Commission" mainly with a view to codify Indian laws and procedure. The most prominent member of the Indian Law Commission was its president, Lord Macaulay. The Commission dealt with substantive criminal law and with procedure of Courts. It made a series of reports which were transmitted to the Court of Directors. The Indian Penal Code, which is a monument to the genius of Lord Macaulay, was prepared in 1837, though it came into operation on January 1, 1862.

In 1847 the Indian Law Commissioners were instructed to prepare a scheme of pleading and procedure with forms of indictment adapted to the provisions of the Penal Code. It was prepared in 1848.

Owing to the great delay in examining the measures recommended by the Indian Law Commissioners, a Royal Commission was appointed in England in 1853<sup>2</sup> to examine and consider the recommendations and the draft enactments of the Indian Law Commissioners, and a second Commission was appointed in 1854. The draft of the Criminal Procedure Code, was examined and revised by the Commissioners appointed in 1854. They prepared a draft Code which was presented to Parliament in 1856, and introduced into the Legislative Council of the Governor-General by Sir Barnes Peacock in 1857. It appeared on the Statute Book as Act XXV of 1861, and came into force on January 1, 1862. Originally, it applied to the territories subject to general Regulations,

<sup>1</sup> 13 Geo. III, c. 63.

<sup>2</sup> By 16 & 17 Vic., c. 95.

and was gradually extended to other territories of British India, barring the presidency-towns. It was considerably amended by Act VIII of 1869. Both these Acts were repealed by the Criminal Procedure Code of 1872 (Act X of 1872). This Code, like its predecessor, did not apply to the High Courts and the Chief Courts of the Punjab, and the Presidency Magistrates' Courts in Calcutta, Madras and Bombay. The several Acts governing the procedure of High Courts were repealed and replaced by the High Courts Criminal Procedure Act (X of 1875 which regulated the procedure of the High Courts in the exercise of their original criminal jurisdiction. The Presidency Magistrates Act (IV of 1877) was enacted to regulate the procedure of the Courts of Magistrates in the presidency-towns. Several provisions of these three Acts—X of 1872, X of 1875 and IV of 1877—were similar though not couched in the same language. It was, therefore, thought desirable to consolidate the three Acts into one single Code of Criminal Procedure for the whole of British India, and Act X of 1882 was therefore passed repealing these three enactments. The Criminal Procedure Code of 1882 remained in force for sixteen years. It was repealed and consolidated by Act V of 1898. The Criminal Procedure Code of 1898 has undergone radical changes by Act XXIII of 1928, and though it was suggested to replace it by a new Code, the Legislature has thought it desirable to maintain it with many additions and alterations by several amending Acts.

The substantive criminal law is contained in the Penal Code, which defines offences and provides for punishments. The Code of Criminal Procedure has been framed to supplement the Penal Code by rules of procedure for preventing offences and bringing offenders to justice. "The great object of penal law being the prevention of offences by the example of punishment, the intent of all Codes of Procedure is to ensure this end; therefore, every system must be imperfect, which permits the form to defeat the substance of the law, and suffers a criminal ever to escape punishment from any defect of form in his prosecution."<sup>1</sup> The Criminal Procedure Code specifies the jurisdiction of several Courts in which offenders may be prosecuted and explains the procedure which should be followed at various stages of an inquiry, trial or any other proceeding. But the Criminal Procedure Code is not pure adjective law (i.e., law of procedure). There are several chapters dealing with matters which partake of the nature of substantive law—Chapter IV, VIII, XIII, XXXVI, XXXVII, and XLIII.

The Criminal Procedure Code is divided into nine Parts. Part I contains preliminary matter; Part II deals with the constitution and powers of Courts and offices; Part III embodies general provisions; Part IV treats of prevention of offences; Part V deals with information to the police and their powers to investigate; Part VI, with proceedings in prosecutions; Part VII, with appeal, reference and revision; Part VIII, with special proceedings; and Part IX gives supplementary provisions.

<sup>1</sup> Louisiana Penal Code, Art. 3.

## PART I.

## PRELIMINARY. c

The Criminal Procedure Code extends to British India ; but it  
Chapter I. does not affect—

- (1) any special or local law ;
- (2) any special jurisdiction or procedure prescribed by any law.

It does not apply to—

- (1) the Commissioners of Police in Calcutta, Madras and Bombay;
- (2) police in the towns of Calcutta and Bombay;
- (3) heads of villages in the Madras Presidency ; and
- (4) village police-officers in the Bombay Presidency (s. 1).

The definitions and explanations of certain words given in the Code are adhered to throughout the Code (s. 4).

Offences under the Penal Code are investigated, inquired into and tried according to the provisions of the Criminal Procedure Code. Offences under any other law are dealt with similarly, but subject to any enactment regulating the manner or place of investigating, inquiring into, or trying such offences (s. 5).

## PART II.

## CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

A.—Classes of criminal Courts.—There are six different classes  
Chapter II. of Courts.

- (1) High Courts ;
- (2) Courts of Session ;
- (3) Presidency Magistrates ;
- (4) First Class Magistrates ;
- (5) Second Class Magistrates ; and
- (6) Third Class Magistrates (s. 6).

B.—Territorial Divisions.—Every province (excluding presidency-towns) is a sessions division, or consists of sessions divisions. Every sessions division is a district or consists of districts. Every presidency-town is a district. The Provincial Government may alter the limits or the number of such divisions and districts (s. 7). It may divide any district into sub-divisions or alter the limits of any sub-division (s. 8).

C.—Courts outside presidency-towns.—(1) Court of Session.—Every sessions division has a Court of Session presided over by a Sessions Judge. Additional Sessions Judge and Assistant Sessions Judge are also appointed to exercise jurisdiction in such Court. A Sessions Judge of one division may be appointed Additional Sessions Judge of another division (s. 9).

(2) District Magistrate.—In every district outside the presidency-towns the Provincial Government appoints a first class Magistrate who is called the District Magistrate. Any Magistrate of the first class may also be appointed as an Additional District Magistrate and he exercises all the powers of a District Magistrate (s. 10). An .

officer temporarily succeeding to a vacancy in the office of a District Magistrate exercises all the powers, and performs all the duties, of a District Magistrate (s. 11).

(3) **Subordinate Magistrate.**—The Provincial Government appoints first, second, or third class Magistrates in a district and such Government or the District Magistrate defines the areas within which they are to exercise their jurisdiction and powers (s. 12). The Provincial Government may put any Magistrate of the first or second class in charge of a sub-division and relieve him of that charge. (It may delegate such power to the District Magistrate.) Such Magistrates are called Sub-divisional Magistrates (s. 13).

(4) **Special Magistrates.**—The Provincial Government may confer the powers of the first, second or third-class Magistrate on any person for dealing with particular cases in any area outside the presidency-towns. Such Magistrates are called Special Magistrates and are appointed for prescribed terms. Such powers are not conferred on any police-officer below the grade of Assistant District Superintendent; and they are only conferred on a police-officer for

- (a) preserving the peace,
- (b) preventing crime,
- (c) detecting and detaining offenders in order to bring them before a Magistrate, and
- (d) for performing any duties imposed by any law (s. 14).

(5) **Benches of Magistrates.**—The Provincial Government may, outside the presidency-towns,

- (a) direct any two or more Magistrates to sit together as a Bench,
- (b) invest such Bench with the powers of the first, second or third class Magistrates, and

(c) direct it to deal with such cases within certain limits.—Every such Bench exercises the powers of the Magistrate of the highest class who is its member (s. 15).

The Provincial Government or the District Magistrate makes rules for the guidance of such Bench of Magistrates in respect of—

- (a) the classes of cases to be tried;
- (b) the times and places of sitting;
- (c) the constitution of the Bench;
- (d) the mode of settling differences of opinion between the Magistrates (s. 16).

**Subordination of Magistrates and Assistant Judges.**—All Magistrates and all Benches in a district are subordinate to the District Magistrate who gives orders as to distribution of business among such Magistrates and Benches. Every Magistrate (other than a Sub-divisional Magistrate) and every Bench in a sub-division is subordinate to the Sub-divisional Magistrate, subject to the general control of the District Magistrate. All Assistant Sessions Judges are subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and who distributes work among them. If the Sessions Judge is unavoidably absent or incapable of acting, he may make provision for the disposal of any urgent application by an Additional or Assistant Sessions

Judge, or if there is none such, by the District Magistrate. Neither the District Magistrate nor the Magistrates or Benches are subordinate to the Sessions Judge except in certain matters specifically stated (s. 17).

**D.—Courts of Presidency Magistrates.**—The Provincial Government appoints a sufficient number of Presidency Magistrates in each presidency-town, and one of them is appointed the Chief Presidency Magistrate. The powers of a Presidency Magistrate under the Code are exercised by the Chief Presidency Magistrate, or a salaried Presidency Magistrate, or any other Presidency Magistrate specially empowered, or by any Bench of Presidency Magistrates. A Presidency Magistrate may also be appointed for a prescribed term. The Provincial Government may appoint any person as an Additional Chief Presidency Magistrate (s. 18). Any two or more Presidency Magistrates may sit together as a Bench subject to any rules made by the Chief Presidency Magistrate (s. 19).

Every Presidency Magistrate exercises jurisdiction—

- (a) in all places within the presidency-town ;
- (b) within the limits of the port of such town ; and
- (c) within the limits of any navigable river or channel leading thereto (s. 20).

The Chief Presidency Magistrate exercises all the powers conferred on him by this Code and makes rules with the sanction of the Provincial Government to regulate—

- (1) the conduct and distribution of business in the Courts of other Magistrates ;
- (2) the times and places at which Benches of Magistrates are to sit ;
- (3) the constitution of such Benches ;
- (4) the mode of settling differences of opinion arising between Magistrates ;
- (5) any other matter which could be dealt with by a District Magistrate under his powers of control over subordinate Magistrates (s. 21).

**E.—Justices of the Peace.**—Every Provincial Government may appoint persons residing in British India and who are not foreign subjects to be Justices of the Peace for the territories notified by them (s. 22).

The Judges of High Courts are ex-officio Justices of the Peace for the whole of British India. Sessions Judges and District Magistrates are Justices of the Peace for the territories administered by the Provincial Government under which they are serving. Presidency Magistrates are Justices of the Peace for the presidency-towns (s. 25).

**Powers of Courts.**—**A.—Offences cognizable by each Court,**

**Chapter III. Offences under the Penal Code.**—These may be tried by (1) the High Court, (2) the Court of Session, or (3) any other Court having jurisdiction to try them (s. 28).

**Offences under other laws.**—These are tried by the Courts mentioned in those laws ; and where no such Court is mentioned, by

the High Court or by any Court constituted under this Code which has jurisdiction to try such offence (s. 29).

**European British subject.**—A Magistrate of the second or third class has only power to inquire into or try an offence which is punishable with fine not exceeding fifty rupees where the accused is an European British subject and claims to be tried as such (s. 29A).

**Juvenile offenders.**—A person who is under the age of fifteen years and who has committed an offence not punishable with death or transportation for life may be tried by a District Magistrate, or a Chief Presidency Magistrate, or by any Magistrate specially empowered to exercise the powers under s. 8 of the Reformatory Schools Act. In any area in which this Act has been repealed, the youthful offender may be tried under any other law providing for the custody, trial or punishment of such offender (s. 29B).

**Specially empowered Magistrates.**—In the Punjab, Oudh, the Central Provinces, Coorg, Assam, and Sind, and in those parts of other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Provincial Government may invest the District Magistrate or any first class Magistrate with power to try all offences not punishable with death (s. 30).

**B.—Sentences which may be passed by Courts of various classes.**—A High Court may pass any sentence authorized by law.

A Sessions Judge or an Additional Sessions Judge may pass any sentence authorized by law, but a sentence of death passed by him is subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of—

- (1) death ;
- (2) transportation exceeding seven years ;
- (3) imprisonment exceeding seven years (s. 31).

Similar sentence may be passed by a District Magistrate or a first class Magistrate specially empowered (s. 34).

**Magistrates** may pass the following sentences combining any of the sentences which they are authorized by law to pass :—

Presidency Magistrates and first class Magistrates. { (a) Imprisonment not exceeding two years, including solitary confinement ;

(b) fine not exceeding Rs. 1,000 ;

(c) whipping ;

Second class Magistrates.

(a) Imprisonment not exceeding six months, including solitary confinement ;

(b) fine not exceeding Rs. 200 ;

(c) whipping if specially empowered ;

Third class Magistrates.

(a) Imprisonment not exceeding one month ;

(b) fine not exceeding Rs. 50

(s. 32).



**Sentence of imprisonment in default of payment of fine.—**A Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law. Such imprisonment may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under s. 82. But—

(1) The term of imprisonment in default of payment of fine must not be in excess of the Magistrate's powers under the Code.

(2) Where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of fine (s. 33).

**Sentence upon European British subjects.—(a)** A Court of Session cannot pass on any European British subject any sentence other than a sentence of death, penal servitude, or imprisonment with or without fine, or of fine;

(b) a District Magistrate or a first class Magistrate cannot pass on any European British subject any sentence other than imprisonment which may extend to two years, or fine which may extend to Rs. 1,000, or both (s. 34A). A sentence of transportation or whipping cannot be passed on an European British subject.

**Conviction of several offences at one trial.—**In such a case the Court may, subject to the provisions of s. 71 of the Penal Code, sentence the offender to the several punishments prescribed therefor which it is competent to inflict. If the punishments consist of imprisonment or transportation, it may direct the order in which they are to run unless they are directed to run concurrently. Where the sentences are consecutive it is not necessary to send the offender before a higher Court because the aggregate punishment is in excess of that which the Court is competent to inflict on conviction of a single offence. But—

(1) the offender shall not be sentenced to imprisonment for more than fourteen years;

(2) the aggregate punishment shall not exceed twice the amount of punishment which a Magistrate (other than a Magistrate specially empowered under s. 84) is competent to inflict.

For the purpose of appeal, the aggregate of consecutive sentences is deemed to be a single sentence (s. 35).

**C.—Ordinary and additional powers.—**The "ordinary powers" of all grades of Magistrates are specified in the third schedule (s. 36). The Provincial Government or the District Magistrate may invest Magistrates with additional powers specified in the fourth schedule (ss. 37, 38).

**D.—Conferment, continuance and cancellation of powers.—**Powers may be conferred on Magistrates by naming them, or in virtue of their office, or by their official titles. The order takes effect from the date on which it is communicated to the Magistrate (s. 39). The Magistrate invested with such powers continues to exercise them even

when he is transferred to another place (s. 40).

The Provincial Government may withdraw powers conferred on any person by it or by any subordinate officer. The District Magistrate may likewise withdraw any powers conferred by him (s. 41).

### PART III.

#### GENERAL PROVISIONS.

**Aid to Magistrate and police.**—Every person is bound to assist Chapter IV. a Magistrate or police-officer demanding his aid—  
(1) in the taking or preventing the escape of any person whom the Magistrate or police-officer is authorized to arrest;

(2) in the prevention or suppression of a breach of the peace;

(3) in the prevention of any injury attempted to be committed to any (a) railway, (b) canal, (c) telegraph, or (d) public property (s. 42).

**Aid to a person executing a warrant.**—When a person other than a police-officer is executing a warrant, any person may aid in its execution (s. 43).

**Information of certain offences.**—(1) By public.—Every person aware of the commission or intention to commit the following offences, under the Penal Code, is bound, in the absence of any reasonable excuse, to give information to the nearest Magistrate or police-officer :—

(1) Certain offences against the State (ss. 121, 121A, 122, 123, 124, 124A, 125, 126, 130).

(2) Unlawful assembly (ss. 143, 144, 145).

(3) Rioting (s. 147) with weapons (s. 148).

(4) Murder (ss. 302, 303).

(5) Culpable homicide not amounting to murder (s. 304).

(6) Theft with preparation to cause death or hurt (s. 382).

(7) Robbery and its aggravated forms (ss. 392, 393, 394, 397, 398).

(8) Dacoity and its aggravated forms (ss. 395, 396, 397, 398, 399, 402).

(9) Mischief by fire or explosive substance (ss. 435, 436).

(10) House-trespass to commit offence punishable with death (s. 449) or transportation for life (s. 450).

(11) Lurking house-trespass or house-breaking by night and its aggravated forms (ss. 456, 457, 458, 459, 460) (s. 44).

(II) By village-headmen, accountants, landlords.—Every (a) village-headman, (b) village-accountant, (c) village-watchman, (d) village-police-officer, (e) owner or occupier of land and his agent, and (f) every officer collecting revenue or rent of land for the Crown or Court of Wards, is bound to communicate to the nearest Magistrate, or police-officer in charge of a police-station, any information respecting—

(1) the permanent or temporary residence of any notorious receiver or vendor of stolen property in the village;

(2) the resort to any place within, or passage through such village of a thug, robber, escaped convict or proclaimed offender;

(3) the commission or intent to commit in the village any non-bailable offence or the offences of unlawful assembly (ss. 148, 144, 145) or rioting (ss. 147, 148);

(4) (a) the occurrence in the village of any sudden, unnatural, or suspicious death; (b) the discovery of any corpse; or (c) the disappearance of any person in such suspicious circumstances that a non-bailable offence is committed in respect of him;

(5) the commission or intention to commit at a place outside British India near such village any of the following offences under the Penal Code:—

(i) Coinage offences (ss. 281, 282, 288, 284, 285, 286, 287, 288).

(ii) Murder (s. 302).

(iii) Culpable homicide (s. 304).

(iv) Theft with preparation to cause death or grievous hurt (s. 382).

(v) Robbery and its aggravated forms (ss. 392, 393, 394, 397, 398).

(vi) Dacoity and its aggravated forms (ss. 395, 396, 397, 398, 399, 402).

(vii) Mischief by fire or explosive substance (ss. 435, 436).

(viii) House-trespass to commit offence punishable with death (s. 449) or transportation for life (s. 450).

(ix) Lurking house-trespass or house-breaking by night and its aggravated forms (ss. 456, 457, 458, 459, 460).

(x) Offences relating to currency-notes and bank-notes (ss. 489A, 489B, 489C, 489D).

(6) Any matter likely to affect (a) the maintenance of order, (b) the prevention of crimes, or (c) the safety of persons or property respecting which the District Magistrate has directed him to communicate information (s. 45).

**A.—Arrest generally.**—The police-officer or person making the

#### Chapter V.

arrest touches or confines the body of the person to be arrested, unless he submits to the custody by word or action. If he forcibly resists or attempts to evade the arrest, force may be used to effect the arrest, but he cannot be killed if he is not accused of an offence punishable with death or transportation for life (s. 46). If he has entered into, or is within, any place, the person in charge of the place must allow free ingress and afford all facilities for a search (s. 47). If such ingress cannot be obtained, then any outer or inner door or window of any house or place may be broken open to obtain admittance. But if such place is an apartment in the occupancy of a zanana woman who does not appear in public, notice to withdraw is given before breaking it open and entering it (s. 48). The police-officer or other person authorized to arrest may break open any outer or inner door or window of any place in order to liberate himself (s. 49). The person arrested is not subjected to unnecessary restraint (s. 50). Where he is not admitted to bail he may be searched and all articles other than necessary wearing-apparel found upon him may be placed in safe custody (s. 51). In the case of a woman the search is made by another woman (s. 52). Any wea-

pons about the person of the arrested person may be seized and delivered to the Court or officer before which or whom he is produced (s. 53).

**B.—Arrest without warrant.—(I) By a police-officer.—**Any police-officer may, without a warrant, arrest—

(1) any person concerned in a cognizable offence, or against whom a complaint has been made, or credible information has been received, or a suspicion exists, of his having been so concerned ;

(2) any person in possession of any implement of house-breaking ;

(3) any proclaimed offender ;

(4) any person in possession of anything suspected to be stolen property or who may be suspected of having committed an offence with reference to it ;

(5) any person obstructing a police-officer in his duty or escaping from lawful custody ;

(6) any deserter from the Army, Navy, or Air Force ;

(7) any person concerned in an offence committed outside British India and for which he is liable to be apprehended under any extradition law or the Fugitive Offenders Act ;

(8) any released convict committing a breach of any rule made under s. 565 (3) ;

(9) any person for whose arrest a requisition has been received from another police-officer authorized to arrest him without a warrant (s. 54) ;

(10) any person who has committed a non-cognizable offence in the presence of the police-officer and refuses to give his name and residence or gives a false name or residence. [Such person is released, when his true name and residence have been ascertained, on his executing a bond to appear before a Magistrate. If the true name and residence of such person are not ascertained within 24 hours from the time of arrest or if he fails to execute the bond, he is forwarded to the nearest Magistrate.] (s. 57) ;

(11) any person designing to commit a cognizable offence which cannot be otherwise prevented (s. 151).

(12) any person whose suspension or remission of sentence has been cancelled by the Provincial Government owing to his failure to fulfil any condition [s. 403 (3)].

Any officer in charge of a police-station may arrest without a warrant—

(1) any person taking precautions to conceal his presence with a view to commit a cognizable offence ;

(2) any person, who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself ;

(3) any person who is an habitual robber, house-breaker, thief, or receiver of stolen property, or who commits extortion (s. 55).

When a police-officer deposes his subordinate officer to arrest without a warrant he gives that officer an order in writing specifying the person and the offence for which he is to be arrested (s. 56). A police-officer may for arresting without warrant any person pursue him into any place in British India (s. 58). He must send without delay

the person arrested before a Magistrate or the officer in charge of a police-station (s. 60). He cannot detain such person in custody for more than twenty-four hours in the absence of a special order of a Magistrate (s. 61). No person arrested by a police-officer is discharged except on his own bond, or on bail, or under the special order of a Magistrate (s. 63).

(II) By a private person.—A private person may arrest—

(1) a person committing a non-bailable and cognizable offence in his view, or

(2) any proclaimed offender.

He must without delay make over such person to a police-officer or to the nearest police-station (s. 59).

**Police to report apprehensions.**—Officers in charge of police-stations are to report to the District Magistrate or to the Sub-divisional Magistrate the cases of all persons arrested without warrant (s. 62).

(III) By a Magistrate.—A Magistrate may arrest within the local limits of his jurisdiction—

(1) any person who commits an offence in his presence (s. 64).

(2) any person for whose arrest he is competent at the time and in the circumstances to issue a warrant (s. 65).

**Escape from custody.**—If a person in lawful custody escapes or is rescued, the person in whose custody he was may pursue and arrest him in any place in British India (s. 66). The person pursuing may enter into any place for search, and may break open any outer or inner door for ingress or egress (s. 67).

**Processes to compel appearance.**—A.—**Summons.**—Every summons is in writing, in duplicate, signed and sealed by the presiding officer of the Court issuing it, or such other officer as the High Court directs. It is served by (1) a police-officer, (2) an officer of the Court issuing it, or (3) a public servant (s. 68).

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It is served personally on the person summoned by delivering or tendering to him one of the duplicates. He signs a receipt on the back of the other duplicate. Service of a summons on an incorporated company or body corporate may be effected by (1) serving it on its secretary, local manager, or principal officer of the corporation, or (2) addressing a registered post letter to its chief officer in British India (s. 69). When the person summoned cannot be found, the summons may be served by leaving one of the duplicates with some adult male member of his family, or, in a presidency-town, with his servant residing with him (s. 70). If service cannot be effected as above, the serving officer affixes one of the duplicates to some conspicuous part of the house or homestead in which he ordinarily resides (s. 71). Service on a servant of the Crown or a railway company may be effected by sending the summons in duplicate to the head of the office who causes it to be served and returns it under his signature with the endorsement of the person on whom it is served (s. 72). When a summons is to be served outside the local limits of a Court, it is sent in duplicate to a Magistrate within the local limits of whose jurisdic-

tion the person summoned resides (s. 73). Service may be proved in such case and in any case where the serving officer is not present at the hearing, by an affidavit that the summons has been served, and a duplicate of the summons endorsed by the person to whom it was delivered or with whom it was left is admissible in evidence, and the statement made therein is deemed to be correct until the contrary is proved (s. 74).

**B.—Warrant.**—Every warrant is in writing, signed by the presiding officer of the Court, or by a member of a Bench of Magistrates, and bears the seal of the Court. It remains in force until it is cancelled or executed (s. 75). The warrant may contain a direction that if the person arrested executes a bond with sufficient sureties for his attendance before the Court he may be released from custody. It states (1) the number of sureties; (2) the amount in which they and the person arrested are to be bound; and (3) the time at which he is to attend before the Court (s. 76). The warrant is ordinarily directed to police-officers, but if no police-officer is available and its immediate execution is necessary it may be directed to any other person. Presidency Magistrates always direct it to police officers (s. 77). A warrant directed to any police-officer may be executed by another police-officer whose name is endorsed by the officer to whom it is directed (s. 79). The warrant may be directed by a District Magistrate or Sub-divisional Magistrate to any landholder, farmer, or manager of land, within his jurisdiction, for the arrest of any escaped convict, proclaimed offender, or person accused of a non-bailable offence. Such person executes it if the person to be arrested enters on the land. If he is arrested he is made over with the warrant to the nearest police-officer who takes him to a Magistrate having jurisdiction in the case (s. 78).

The person executing a warrant notifies its substance to the person to be arrested and, if required, shows it to him (s. 80). The person arrested is brought before the Court before which he is to be produced without delay (s. 81). A warrant may be executed at any place in British India (s. 82).

**Execution outside jurisdiction.**—The Court may forward the warrant by post or otherwise to any Magistrate, District Superintendent of Police, or Commissioner of Police in a presidency-town, within whose jurisdiction it is to be executed. Such officer endorses his name thereon and causes it to be executed (s. 83). When a warrant directed to a police-officer is to be executed outside the jurisdiction of the Court, the police-officer takes it for endorsement to a Magistrate or to a police-officer in charge of a station within whose jurisdiction it is to be executed. The Magistrate or the police-officer endorses his name thereon and such endorsement authorizes the police-officer to execute it within such limits. If the delay occasioned in obtaining the endorsement is likely to prevent its execution, it may be executed at once (s. 84). The person arrested is taken to the Magistrate, the District Superintendent of Police, or the Commissioner of Police, unless the Court issuing the warrant is (1) within twenty miles of the place of arrest, or (2) nearer than the above officers (s. 85). The Magistrate or

the District Superintendent or the Commissioner of Police directs his removal in custody to such Court. But if the offence is bailable or there is a direction on the warrant as regards securities to be taken, then such officer takes bail or security if the person arrested is willing to give it and forward the bond to the Court (s. 86).

**Certain rules of process.**—The Court may issue a warrant in lieu of or in addition to a summons, after recording its reason in writing for the appearance of any person, other than a juror or assessor, if—

(1) it has reason to believe that such person has absconded or will not obey the summons; or

(2) he fails to appear after the summons is served without any reasonable excuse (s. 90).

A warrant may be issued to arrest a person who is bound by a bond to appear before a Court but does not appear (s. 92).

The Court may require any person present in Court to execute a bond for his appearance before it, provided it is empowered to issue a summons or warrant for his appearance (s. 91).

**Special rules of process.**—Where a Court in British India desires that a summons issued by it to an accused shall be served at any place outside British India but within the jurisdiction of a Court established by the Central Government or the Crown Representative in India, it shall send such summons, in duplicate, by post or otherwise, to the presiding officer of that Court to be served. The provisions of s. 74 will apply to the presiding officer (s. 93A). Where a Court in British India desires that a warrant issued by it for the arrest of an accused person shall be executed at any place outside British India, but within the jurisdiction of a Court established by the Central Government or the Crown Representative in India, it may send such warrant by post or otherwise to the presiding officer of that Court to be executed (s. 93B). Where a Court in British India has received for service a summons to, or a warrant for the arrest of, an accused person from a Court established by the Central Government or the Crown Representation in any part of India, it shall cause the same to be served or executed as if it were a summons or warrant received by it from a Court in British India. Where any person has been arrested under such a warrant, he shall be dealt with in accordance with the provisions of ss. 85 and 86 (s. 93C).

**C.—Proclamation for person absconding.**—If the person against whom a warrant has been issued has absconded or is concealing himself, the Court may publish a written proclamation requiring him to appear at a specified place and time not less than thirty days from its date. The proclamation is published—

(1) by publicly reading it in some conspicuous place of the town or village in which he resides ;

(2) by affixing it to some conspicuous part of the house or homestead in which he resides or to some conspicuous place of the town or village ;

(3) by affixing its copy to some conspicuous part of the Court-house (s. 87).

**Attachment of property of the person absconding.**—The Court issuing a proclamation may at any time order the attachment of the property of the proclaimed person. The order may be executed outside the district when it is endorsed by the District Magistrate or the Chief Presidency Magistrate within whose district it is situate.

(I) If the property to be attached is a debt or moveable property, the attachment is made by

- (1) seizure;
- (2) the appointment of a receiver;
- (3) an order in writing prohibiting the delivery of the property to the proclaimed person or to anyone on his behalf;
- (4) all or any two of such methods.

(II) If the property to be attached is immoveable property, the attachment is made

(a) in the case of land paying revenue to Government through the Collector;

(b) in other cases—

- (i) by taking possession;
- (ii) by the appointment of a receiver;
- (iii) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to anyone on his behalf;

(iv) by all or any two of such methods.

(III) If the property to be attached consists of live-stock or is of a perishable nature, the Court may order its immediate sale (s. 88).

**Claim to attached property.**—If a person prefers a claim or objects to the attachment, within six months from the date of such attachment, on the ground that he has such an interest in the property as is not liable to attachment, the claim or objection is inquired into. In the event of the death of the claimant or objector, it may be continued by his legal representative. The claim or objection may be made in the Court issuing the attachment or in the Court of the District Magistrate or the Chief Presidency Magistrate in whose jurisdiction the property is situate. If the claim or objection is disallowed in whole or in part, the claimant or objector may, within one year from the order disallowing it, institute a suit to establish his right, but subject to the result of the suit the order is conclusive.

If the proclaimed person appears within the time specified in the proclamation, the Court releases the property from the attachment. If he does not appear within the time, the property remains at the disposal of the Provincial Government, but it is not sold, until (1) the expiration of six months from the date of attachment, and (2) any claim or objection has been disposed of. But the Court may sell it if (1) it is subject to speedy and natural decay, and (2) the sale would be for the benefit of the owner (s. 88).

**Restoration of attached property.**—If within two years from the date of attachment, the proclaimed person appears or is apprehended, and proves to the satisfaction of the Court that he did not



abscond or conceal himself, and that he had no notice of proclamation, the property or the nett proceeds of the sale is, after deducting the costs incurred, delivered to him (s. 89).

**Production of documents and moveable property.—Summons.**—When (a) a Court, or (b) an officer in charge of a police-station outside the towns of Calcutta and Bombay considers that a document or thing is necessary or desirable for any investigation, inquiry or trial, the Court may issue a summons, or the officer an order, to the person in whose possession or power it is to produce it at a specified time and place. Such document or thing may be produced by the person himself or by someone on his behalf (s. 94).

If the document (letter or telegram) or thing (parcel) is in the custody of the Postal or Telegraph authorities, the District Magistrate, Chief Presidency Magistrate, High Court, or Court of Session may require such authorities to deliver it to such person as the Court directs. If such document or thing is wanted by any other Magistrate, or Commissioner of Police, or District Superintendent of Police, he may require the Postal or Telegraph authorities to search and detain it pending the orders of the District Magistrate, Chief Presidency Magistrate, or the Court (s. 95).

**Search-warrants.**—The Court may issue a search-warrant for—

(I) Production of a document or thing.  
(II) Search of a house suspected to contain stolen property, forged documents, etc.

(III) Seizure of any forfeited publications.

(IV) Discovery of persons wrongfully confined.

(I) **Production of a document or thing.**—A search-warrant may be issued to a person—

(1) where a Court believes that a person to whom a summons or order or requisition to produce a document or thing has been or might be addressed will not produce it ;

(2) where the document or thing is not known to the Court to be in possession of any person ;

(3) where the Court considers that the purpose of any inquiry, trial, or proceeding will be served by general search or inspection (s. 96.)

A District Magistrate or Chief Presidency Magistrate can only grant a search-warrant for an article in the custody of the Postal or Telegraph authorities (s. 96) The Court may specify in the warrant the particular place or part to which only the search or inspection is to extend (s. 97.)

(II) **Search of a place.**—A District Magistrate, Sub-divisional Magistrate, Presidency Magistrate, or Magistrate of the first class may issue a search-warrant to a police-officer above the rank of a constable if upon information and after inquiry he believes that any place is used for—

(1) deposit or sale of stolen property ;

(2) deposit or sale or manufacture of forged documents, false seals, counterfeit stamps or coins, or instruments for counterfeiting or forging ;

(3) deposit or keeping of any forged documents, false seals, or counterfeit stamps or coins or instruments for counterfeiting or forging ;

(4) deposit, sale, manufacture or production of any obscene object referred to in s. 292, Indian Penal Code.

Such warrant may authorize the police-officer—

(1) to enter and search the place ;

(2) to take possession of any property, documents, seals, stamps or coins which he suspects to be stolen, forged, false or counterfeit, and any instruments and materials for counterfeiting or forging ;

(3) to convey such property, etc., before a Magistrate or to keep it in a place of safety ;

(4) to take into custody and carry before a Magistrate every person found in such place who is privy to the deposit, sale, etc. (s. 98.)

Things found in search at a place beyond the local limits of the Court are taken before it unless the place is nearer to the Magistrate having jurisdiction than to such Court, in which case they are taken before that Magistrate who makes an order to take them to such Court. (s. 99.)

(III) **Forfeiture of newspapers, books or documents.**—If any newspaper, book, or document, wherever printed, appears to the Provincial Government to contain matter which is seditious, or promotes feelings of enmity between different classes, or outrages the feelings and insults the religion of any class, the Provincial Government may, by notification in the Official Gazette, stating the grounds of its opinion, declare every copy of such publication to be forfeited to His Majesty, and thereupon any police-officer may seize it wherever found in British India. Any Magistrate may by warrant authorize any police-officer not below the rank of Sub-inspector to enter upon and search for it in any premises where it is suspected to be (s. 99A.)

Any person having any interest in such publication may within two months from the date of the order apply to the High Court to set it aside on the ground that the publication did not contain any seditious or other objectionable matter (s. 99B). Such application is heard and determined by a Special Bench composed of three Judges (s. 99C). If the Bench is not satisfied that the publication contained any seditious or objectionable matter, it will set aside the order of forfeiture. If there is a difference of opinion among the Judges, the decision is in accordance with the opinion of the majority (s. 99D). When the application is with reference to a newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in it (s. 99E).

(IV) **Discovery of persons wrongfully confined.**—If a Presidency Magistrate, first class Magistrate, or Sub-divisional Magistrate has reason to believe that a person is wrongfully confined, he may issue a search-warrant for the search of that person, and if he is found he is taken before a Magistrate (s. 100).

**General provisions relating to searches.**—Persons in charge of closed places must allow free ingress and egress to the officer or person executing the warrant (s. 202). The officer or person making the search

must (1) call two or more respectable inhabitants of the locality to witness the search, (2) make the search in their presence, (8) prepare a list of all things seized and have it signed by the witnesses, (4) permit the occupant of the place searched or some person in his behalf to attend during the search; and (5) deliver a copy of the list to him. Persons refusing to attend a search, when called upon by an order in writing, are guilty of an offence under s. 187, Penal Code (s. 103). A Court may impound any document or thing produced before it (s. 104). 'A Magistrate may direct a search to be made in his presence of any place of which he is competent to issue a search-warrant (s. 105).

## PART IV.

### PREVENTION OF OFFENCES.

**Security for keeping the peace.—(I) On conviction.**—When a Chapter VIII. person is convicted of offences against

(1) public tranquillity (Ch. VII, Penal Code)—except offences under s. 149 (being member of an unlawful assembly), s. 153A (promoting enmity between classes) and s. 154 (owner of land not preventing unlawful assembly);

(2) assault;

(8) any offence involving breach of the peace;

(4) criminal intimidation

before a High Court, a Court of Session, a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or first class Magistrate, and such Court is of opinion that it is necessary that such person should execute a bond for keeping the peace, it may at the time of passing sentence order him to execute a bond for a sum proportionate to his means with or without sureties for keeping the peace for a period not exceeding three years. If the conviction is set aside on appeal or otherwise, the bond becomes void. An order under this section may be made by an appellate Court or by High Court in revision (s. 106).

**(II) In other cases.**—When a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or first class Magistrate, is informed that any person is likely to

(1) commit a breach of the peace, or

(2) disturb the public tranquillity, or

(8) do any wrongful act that may occasion a breach of the peace or disturb the public tranquillity,

the Magistrate may require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for a period not exceeding one year. Such person or the place where the disturbance is apprehended must be within the local limits of the Magistrate's jurisdiction. No Magistrate, other than a Chief Presidency or District Magistrate, takes proceedings unless the person and the place are within his jurisdiction. A Magistrate not empowered to take such bond may, after recording his reasons, issue a warrant for the arrest of such person and send him before a Magistrate so empowered.

with a copy of his reasons. Such Magistrate may detain such person in custody pending further action (s. 107).

**Security for good Behaviour.**—This may be taken from

- (I) persons disseminating seditious matter ;
- (II) vagrants or suspected persons ; and
- (III) habitual offenders.

(I) When a Chief Presidency Magistrate, District Magistrate, or first class Magistrate specially empowered, has information that there is a person within his jurisdiction who intentionally disseminates or attempts or abets the dissemination of any matter.

- (1) which is seditious matter (s. 124A, I. P. C.) ;
- (2) promoting enmity between classes (s. 153A, I. C. P.) ;
- (3) concerning a Judge amounting to criminal intimidation or defamation ;

such Magistrate may require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for a period not exceeding one year. Where any such publication is registered under the Press and Registration of Books Act, 1867, no proceedings are taken except by the order or under authority of the Provincial Government (s. 108).

(II) When a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or first class Magistrate receives information that any person within his jurisdiction—

- (1) is taking precautions to conceal his presence with a view to committing any offence ; or
- (2) has no ostensible means of subsistence ; or
- (3) cannot give a satisfactory account of himself,

such Magistrate may require him to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for a period not exceeding one year (s. 109).

(III) When a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or first class Magistrate specially empowered receives information that any person within his jurisdiction

- (1) is by habit a robber, house-breaker, thief, or forger ; or
- (2) is by habit a receiver of stolen property ; or
- (3) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property ; or
- (4) habitually commits or attempts to commit or abets the commission of kidnapping, abduction, extortion, cheating, or mischief or an offence punishable under Chapter XII or ss. 489A, 489B, 489C, 489D of the Penal Code ; or
- (5) habitually commits or attempts to commit or abets the commission of offences involving a breach of the peace ; or
- (6) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may require him to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for a period not exceeding three years (s. 110).

**Order how made.**—The order requiring any person to show cause must be in writing, setting forth (1) the substance of the information, (2) the amount of the bond to be executed, (3) the term for which it is to be in force, and (4) the number, character and class of sureties required (s. 112). If such person is present in Court, the order must be read over or explained to him (s. 113). If he is not present, a summons is issued for his appearance; if he is in custody, a warrant is issued directing the officer in whose custody he is to bring him before the Court. If there is reason to fear that he is likely to commit a breach of the peace, then the Magistrate may issue a warrant for his immediate arrest (s. 114). Every summons or warrant is accompanied by a copy of the written order of the Magistrate and it is delivered to the person to be served (s. 115). He may appear by pleader, if the Magistrate dispenses with personal attendance (s. 116). When he comes before the Court, the Magistrate proceeds to inquire into the truth of the information upon which action has been taken and takes further evidence if necessary. The inquiry is made as in a trial in a summons-case, if the order requires security for keeping the peace; it is made as in a warrant-case, if the order requires security for good behaviour. Pending the inquiry, the Magistrate may direct the person to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry. The Magistrate may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded. But a person against whom proceedings are not taken under s. 108, 109 or 110 is not directed to execute a bond for maintaining good behaviour. The conditions of such bond as to the amount, number of sureties, and their pecuniary liability, are not more onerous than the written order issued. The fact that a person is an habitual offender or is a desperate or dangerous character may be proved by evidence of general repute (s. 117).

If upon inquiry it is found necessary that the person concerned should execute a bond, with or without sureties, the Magistrate makes the order. But

(1) no person is ordered to give security of a nature different from, or of an amount larger than, or for a period longer than that specified in the order under s. 112;

(2) the amount of the bond shall not be excessive;

(3) when the person is a minor, the bond is executed by his sureties (s. 118).

If, on inquiry it is not proved that it is necessary that such person should execute a bond, the Magistrate makes an entry on the record, and discharges him, or, if he is in custody, releases him (s. 119).

**Proceedings subsequent to order.**—If the person in respect of whom an order requiring security is made is sentenced to, or undergoing, imprisonment, the period for which such security is required commences on the expiration of such sentence instead of running from the date of the order (s. 120).

If the person executing a bond for keeping good behaviour commits, or attempts to commit, or abets the commission of any offence punishable

able with imprisonment, there is a breach of the bond (s. 121). A Magistrate may, after holding an inquiry on oath, refuse to accept any surety, or reject any surety previously accepted by him, on the ground that such surety is an unfit person. Before holding such inquiry reasonable notice must be given to the surety and to the person offering the same. Such inquiry may be directed to be held by a subordinate Magistrate before making an order rejecting any surety who has previously been accepted, the Magistrate issues a summons or warrant and causes the person for whom the surety is bound to appear or to be brought before him (s. 122). If any person ordered to give security does not give it, he is committed to prison, or, if he is in prison, is detained there until such period expires or until within such period he gives the security. When such person has been ordered to give security for a period exceeding one year, the Magistrate, if he does not give security, issues a warrant directing him to be detained in prison pending the order of the Sessions Judge, or if such Magistrate is a Presidency Magistrate, pending the orders of the High Court, and the proceedings are laid before such Court. Such Court may pass any order as it thinks fit, but he cannot be imprisoned for failure to give security for more than three years. Such imprisonment is simple. Imprisonment for failure to give security for good behaviour is, where proceedings have been taken under s. 108, simple, and where the proceedings have been taken under s. 109 or s. 110, rigorous or simple (s. 123). The District Magistrate or the Chief Presidency Magistrate may release with or without conditions persons imprisoned for failing to give security if he thinks there is no hazard to the community. Such Magistrate may make an order reducing the amount of the security or the number of sureties or the period (s. 124). Such Magistrate may cancel any bond executed by order of any subordinate Court (s. 125). Any surety may apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or first class Magistrate, to cancel any bond executed within his local limits. The Magistrate issues a summons or a warrant for the appearance of the person for whom such surety is bound. The Magistrate cancels the bond and orders him to give for the unexpired period of such bond fresh security of the same kind (ss. 126, 126A).

**Unlawful assemblies.**—Any Magistrate or officer in charge of a police-station may command any unlawful assembly to disperse (s. 127). If such assembly does not disperse, the Magistrate or officer may disperse it by force with the assistance of any male person and arrest and confine the persons forming part of it (s. 128). If the assembly cannot be otherwise dispersed, the Magistrate of the highest rank who is present may disperse it by military force (s. 129). The officer commanding troops must obey the requisition of the Magistrate, and use as little force and do as little injury to person and property as may be necessary in dispersing it (s. 130). Any commissioned military officer may disperse such assembly by military force if (a) public security is manifestly endangered, and (b) no Magistrate can be communicated with (s. 131).

Sanction of the Provincial Government is necessary for any prosecution against any person, Magistrate, or officer, for an act done under this Chapter. Sanction of the Central Government is necessary in the case of a military officer or soldier. Any act done in good faith and any act done by an inferior officer or soldier in obedience to any order is not an offence (s. 132).

**Public nuisances.**—When a District Magistrate, Sub-divisional Magistrate, or first class Magistrate, considers on receiving a police-report or other information, and on taking necessary evidence, that

(1) any obstruction or nuisance should be removed from any public place or any way, river, or channel ;

(2) any trade or the keeping of goods is injurious to the health or comfort of the community ;

(3) any building or substance is likely to cause conflagration or explosion ;

(4) any building, tent, or structure, or a tree is likely to fall and cause injury ;

(5) any tank, well, or excavation should be fenced to prevent danger to the public ;

(6) any dangerous animal should be destroyed or confined ;

he may make a conditional order requiring the person causing the nuisance to do the necessary acts to remove, prevent or stop it, and to appear before himself or other Magistrate (first or second class) to have the order set aside or modified. Such an order is not called in question in a civil Court (s. 133). It is served as a summons and, if it cannot be so served, it is notified by proclamation and published, and its copy is stuck up at a place best fitted for conveying the information (s. 134). The person against whom the order is made

(a) performs, within the time specified in the order, the act directed ; or

(b) appears and shows cause against the order or applies to appoint a jury to try whether it is reasonable and proper (s. 135).

If he does not do so he is punished under s. 188, Penal Code, and the order is made absolute (s. 136). If he appears to show cause against the order, the Magistrate takes evidence as in a summons-case. If the Magistrate is satisfied that the order is not reasonable and proper no further proceedings are taken ; otherwise the order is made absolute (s. 137). If the person applies for a jury, the Magistrate appoints a jury of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members are nominated by the Magistrate, and the other half by the applicant. The Magistrate summons the jury to attend at a particular place and time and fixes a time within which they are to return their verdict (s. 138). If the jury or a majority of the jurors find that the Magistrate's order is reasonable and proper or requires a modification, the Magistrate makes the order absolute subject to such modification, if any. If the jury think otherwise, no further proceedings are taken (s. 139).

Where an order is made against a person for preventing obstruction, nuisance, or danger to the public in the use of any way, river, channel or place, the Magistrate questions him if he denies the existence of public right therein, and if he does so the Magistrate inquires into the matter. If the Magistrate finds that there is reliable evidence in support of such denial, he stays the proceedings until the matter is decided by a civil Court; if there is no evidence he proceeds under s. 137 or s. 138. If he does not deny the existence of a public right, or fails to adduce evidence in his support, he is not in subsequent proceedings permitted to make any such denial (s. 139A). When the order is made absolute, the Magistrate gives notice of it to the person against whom it was made, and requires him to perform the act directed by the order within a fixed time and informs him that in case of disobedience he is liable under s. 188, Indian Penal Code. If the act is not so performed, the Magistrate may cause it to be performed and recover the costs (1) by sale of any buildings, goods or property removed, or (2) by distress and sale of his movable property within or without his jurisdiction. Where the property is outside jurisdiction, the order authorises its attachment and sale when endorsed by the Magistrate within whose jurisdiction it is situate (s. 140). If the person neglects or prevents the appointment of the jury, or the jury do not return their verdict within time, the Magistrate may pass such order as he thinks fit (s. 141). If the Magistrate thinks that immediate measures are necessary to prevent imminent danger or injury of a serious kind, he may issue an injunction to obviate or prevent such danger or injury, pending the determination of the matter. If the injunction is not obeyed, the Magistrate may use means to obviate or prevent such danger or injury (s. 142). The Magistrate may order any person not to repeat or continue a public nuisance (s. 143).

**Temporary orders in urgent cases of nuisance.**—When a District Magistrate, Chief Presidency Magistrate, Sub-divisional Magistrate, or other Magistrate (not Chapter XI. third class) specially empowered, is of opinion that immediate prevention or speedy remedy is desirable, he may, by a written order stating the material facts and served as a summons, direct any person

- (1) to abstain from a certain act, or
- (2) to take certain order with certain property in his possession or management,
- if such direction is likely to prevent
  - (i) obstruction, annoyance or injury to any person lawfully employed; or
  - (ii) danger to human life, health or safety; or
  - (iii) a disturbance of the public tranquillity, or a riot, or an affray.

In cases of emergency, or where such an order cannot be served in due time, it may be passed *ex parte*. The order may be directed to a particular individual or to the public generally when frequenting or visiting a particular place. The order does not remain in force for more than two months, unless in cases of (1) danger to human life,



health, or safety, or (2) a riot or an affray, the Provincial Government by notification extends it. Any Magistrate may on his own motion or on the application of any aggrieved person, rescind or alter any order made by himself or his predecessor or by any Magistrate subordinate to him. On receiving such application, the Magistrate affords to the applicant an early opportunity of shewing cause against the order. If the Magistrate rejects the application he must record his reasons in writing (s. 144).

**Disputes as to immovable property.**—The dispute may be concerning (I) 'land or water' [which includes buildings, markets, fisheries, crops, rents]; or (II) user thereof.

(I) When a District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists concerning any 'land or water' within his jurisdiction, he makes an order in writing stating his grounds and requiring the parties concerned in such dispute to attend his Court and put in written statements of their claims as to the fact of actual possession of the subject of dispute. A copy of the order is served as a summons and one copy is affixed to some conspicuous place near the subject of dispute. After perusing the statements and receiving all evidence, the Magistrate decides which of the parties was in possession at the date of the order. Any party who has been forcibly and wrongfully dispossessed within two months before the date of such order, may be treated as if he had been in possession at such date. In case of emergency, the Magistrate may attach the subject of dispute pending his decision. If any party shows that no such dispute exists, the Magistrate cancels his order, and all proceedings are stayed; otherwise the order is final. After the Magistrate decides as to which party should be treated as being in possession, he issues an order declaring such party to be entitled to possession until evicted in due course of law, and forbidding all disturbance until eviction; and he may restore to possession the party forcibly and wrongfully dispossessed. If a party dies during inquiry his legal representatives may be made parties to the proceeding. If any crop or produce of the property in dispute is subject to speedy and natural decay, the Magistrate may make an order for proper custody or sale, and upon completion of the inquiry makes an order for the disposal of the property or its sale-proceeds (s. 145).

If the Magistrate (1) decides that none of the parties was in possession, or (2) is unable to satisfy himself as to which of them was in possession, he may attach the subject of dispute until a competent Court has determined the rights of the parties or the person entitled to possession. On attachment the Magistrate may appoint a receiver, if there is none appointed by a civil Court, and he has all the powers of a receiver appointed under the Civil Procedure Code. If a receiver is subsequently appointed by a civil Court, possession is made over to him by such receiver. The attachment may be withdrawn if there is no longer any likelihood of a breach of the peace (s. 146).

(II) When a District Magistrate, Sub-divisional Magistrate, or first class Magistrate, is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists regarding any right of user (including easement) of any land or water within his jurisdiction, he may make an order in writing stating his grounds and requiring the parties concerned to attend the Court and put in written statements of their claims, and inquires into the matter in the manner provided in §. 145. If such right exists he may make an order prohibiting any interference with its exercise. But no such order is made (1) where the right is exercisable at all times of the year, unless it has been exercised within three months before the inquiry, or (2) where the right is exercisable at particular seasons or occasions unless it has been exercised during the last of such seasons or occasions. If the right does not exist the Magistrate may make an order prohibiting any exercise of it. The order is subject to any subsequent decision of a competent civil Court (s. 147).

**Local inquiry.**—The District Magistrate or Sub-divisional Magistrate may depute any subordinate Magistrate to make local inquiry, and his report may be read as evidence in the case (s. 148).

**Costs.**—The Magistrate passing the order may direct by whom and in what proportion the costs incurred by a party are to be paid (s. 148).

**Chapter XIII. Preventive action of the police.**—(1) Every police-officer may interpose for preventing the commission of a cognizable offence (s. 149).

(2) On receiving information of a design to commit such offence he communicates it to his superior officer and to any officer whose duty it is to prevent or take cognizance of the commission of it (s. 150).

(3) He may arrest without a warrant the person so designing if the offence cannot be otherwise prevented (s. 151).

(4) He may interpose to prevent any injury to any public property, public land-mark, or buoy, or other mark used for navigation (s. 152).

(5) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for inspecting or searching for any false weights or measures, or false instruments for weighing. He may seize any such false weights, measures, or instruments, and give information of such seizure to a Magistrate having jurisdiction (s. 153).

## PART V.

### INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

**Cognizable cases.**—Information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police-station, is (1) reduced to writing, (2) read over to the informant, (3) signed by the informant, and (4) entered in its substance in a prescribed book.

#### Chapter XIV.

If the information be in writing, (1) it is signed by the informant, and (2) the substance thereof is entered in the prescribed book (s. 154).

An officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case (s. 156). On receiving information of the commission of such offence he sends a report to a Magistrate empowered to take cognizance of it upon a police-report, and proceeds in person or deposes one of his subordinates to investigate the facts and circumstances of the case and to take measures for the discovery and arrest of the offender. Local investigation may be dispensed with when the informant gives the name of the offender and the offence is not of a serious nature. If the police-officer thinks there are not sufficient grounds for investigation he states his reasons in the report to the Magistrate and notifies to the informant the fact that he will not investigate (s. 157). The report is sent through his superior officer as the Provincial Government may direct, and such officer gives any necessary instructions to the police-officer and transmits it to the Magistrate (s. 158). The Magistrate may (1) direct investigation, or (2) proceed to hold a preliminary inquiry or depute any subordinate Magistrate to do so, or (3) otherwise dispose of the case (s. 159).

**Non-cognizable cases.**—In the case of information of a non-cognizable offence committed within the limits of a police-station, the police-officer enters its substance in the prescribed book and refers the informant to a Magistrate. A police-officer does not investigate a non-cognizable case without the order of a first or second class Magistrate having power to try such case or commit the same for trial or of a Presidency Magistrate. Any police-officer receiving such order may exercise the same powers in respect of the investigation (except power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case (s. 155).

**Attendance of witnesses.**—A police-officer making an investigation may by a written order require the attendance of persons acquainted with the circumstances of the case (s. 160). He may examine them orally and they are bound to answer all questions relating to the case, other than questions the answers to which would have a tendency to expose them to a criminal charge or to a penalty or forfeiture (s. 161).

**Statement to police.**—A statement made to the police, if reduced into writing, is not to be signed by the person making it; and the statement or any record thereof, whether in a police-diary or otherwise, is not to be used for any purpose at any inquiry or trial except in the following way:—

If the maker of the statement is called as a witness for the prosecution, the Court on the request of the accused refers to such writing and directs that the accused be furnished with a copy thereof in order that any part of such statement, if duly proved, may be used to contradict such witness under s. 145 of the Evidence Act. It may also be used in his re-examination for explaining any matter. But if the Court is of opinion that (1) any part of such statement is not relevant, or (2) its disclosure is not essential in the interests of justice and it

inexpedient in the public interests, it records its opinion and excludes such part from the copy to be furnished to the accused. The principle of this section does not (1) apply if the statement comes within the purview of s. 32, cl. (1), of the Evidence Act, or (2) affect the provisions of s. 27 of the Evidence Act (s. 162). A police-officer shall not offer any inducement, threat or any promise to the person making the statement as mentioned in s. 24 of the Evidence Act. He shall not by caution prevent any person from making any statement of his own free will (s. 163).

**Power to record a statement or confession.**—A Presidency Magistrate, first class Magistrate or second class Magistrate specially empowered (but not a police-officer), may record a statement or confession made (1) in the course of an investigation, or (2) at any time before the commencement of the inquiry or trial.

The statement is recorded in the manner prescribed for recording evidence. The confession is recorded and signed in the manner provided in s. 364.

The statement or confession is forwarded to the Magistrate by whom the case is to be inquired into or tried. The Magistrate recording it may not be the Magistrate having jurisdiction in the case.

(1) Before recording a confession the Magistrate explains to the person making it

- (i) that he is not bound to make it ;
- (ii) that it may be used as evidence against him.

(2) The Magistrate does not record it unless upon questioning the person making it, he has reason to believe that it was made voluntarily.

(3) When recording it he makes a memorandum stating that it has been explained to the accused that

- (i) he is not bound to make a confession ;
- (ii) it may be used as evidence against him ;
- (iii) it was voluntarily made ;
- (iv) it was taken in his presence and hearing ;
- (v) it was read over to him ;
- (vi) it was admitted by him to be correct ; and
- (vii) it contained a full and true account of the statement made by him (s. 164).

**Search.**—A police-officer may search any place within the limits of his police-station for anything necessary for investigation into an offence, if it cannot be obtained without undue delay, after recording in writing the grounds of his belief and specifying the thing for which the search is to be made. He conducts the search in person, or deposes his subordinate after recording his reasons for doing so. An order in writing is given to the subordinate officer specifying the place to be searched and the thing for which search is to be made. The owner or occupier of the place searched is on application furnished with a copy of the order by the Magistrate on payment, or free of cost if there are special reasons (s. 165). An officer in charge of a police-station or a police-officer not below the rank of Sub-inspector may require an

officer in charge of another police-station, in the same or a different district, to cause a search to be made in any place within the limits of such station. Such officer proceeds as under s. 165 and forwards the thing found to the officer at whose request the search was made. If the delay caused in proceeding in this way might result in evidence of the commission of an offence being concealed or destroyed, the police-officer may himself search any place in the limits of another police-station. He must send notice of the search to the officer in charge of that police-station together with a copy of the list made in the presence of witnesses and send to the Magistrate empowered to take cognizance copies of the record referred to in s. 165 (s. 166).

**Investigation.**—When a person is arrested and is in custody and it appears that the investigation cannot be completed within twenty-four hours, and the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation (not below the rank of sub-inspector) forwards to the nearest Magistrate (whether he has jurisdiction to try the case or not) a copy of the entries in his diary and the accused. Such Magistrate may from time to time authorize the detention of the accused in such custody as he thinks fit for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case or commit it, and consider further detention unnecessary, he may forward the accused to a Magistrate having jurisdiction. A Magistrate authorizing detention in the custody of the police records his reasons. But a Magistrate of the third class or of the second class not specially empowered cannot authorize detention in police custody. If order for detention is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, its copy together with reasons for making it is forwarded to the Magistrate to whom he is subordinate (s. 167).

A subordinate police-officer making an investigation reports the result to the officer in charge of the police-station (s. 168).

If it appears to the officer in charge of the police-station or to the investigating officer that there is not sufficient evidence to justify the forwarding of the accused to a Magistrate, he may release the accused if in custody on the accused's executing a bond with or without sureties, to appear before a Magistrate if required (s. 169). But if there is sufficient evidence, he

(1) forwards the accused to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or commit him for trial or, if the offence is bailable and the accused is able to give security, takes security from him for his appearance before such Magistrate;

(2) sends to such Magistrate any weapon or article which it may be necessary to produce before him;

(3) requires the complainant and witnesses to execute a bond to appear before the Magistrate to give evidence;

(4) delivers a copy of such bond to one of the persons executing it, and sends the original with his report to the Magistrate (s. 170).

The complainant or a witness is not required to accompany a police-officer on his way to the Court or subjected to any restraint or inconvenience, or required to give any security for his appearance other than his own bond. But if he refuses to attend or to execute a bond, he may be forwarded in custody to the Magistrate who may detain him in custody until he executes such bond or the hearing is completed (s. 171).

Every investigating police-officer enters his proceedings in a diary, setting forth—

- (1) the time at which the information reached him ;
- (2) the time at which he began and closed his investigation ;
- (8) the place or places visited by him ; and
- (4) a statement of the circumstances ascertained through his investigation.

A criminal Court may send for the police diaries, and may use them not as evidence in the case, but to aid the Court in such inquiry or trial. The accused is not entitled to call for them because the Court refers to them. But he can call for them if

- (1) they are used by the police-officer to refresh his memory ; or
- (2) if the Court uses them for the purpose of contradicting such police-officer (the provisions of s. 161 or s. 145 of the Evidence Act shall apply) (s. 172).

**Report.**—Every investigation is completed without delay, and the officer in charge of the police-station

- (1) forwards to a Magistrate empowered to take cognizance of the offence on a police-report, a report setting forth (i) the names of the parties, (ii) the nature of the information, (iii) the names of the persons who are acquainted with the case, (iv) whether the accused has been forwarded in custody or has been released on his bond with or without sureties ;

- (2) communicates the action taken by him to the informant ;

- (8) furnishes a copy of the report to the accused if applied for, either on payment or free of cost if there is some special reason (s. 173).

**Report on suicide, murder, accident.**—The officer in charge of a police-station or other police-officer specially empowered (in Bombay and Madras Presidencies the heads of villages have the power) on receiving information that a person (i) has committed suicide, or (ii) has been killed by another, or by an animal or machinery, or by an accident, or (iii) has died under suspicious circumstances that some other person has committed an offence.

- (1) immediately gives intimation to the nearest Magistrate empowered to hold inquests (viz., District Magistrate, Sub-divisional Magistrate, first class Magistrate, any Magistrate specially empowered) ;

- (2) proceeds, unless otherwise directed, to the place where the body of the deceased is, and in the presence of two or more respectable inhabitants of the neighbourhood makes an investigation and draws up a report of the cause of death describing wounds, bruises, marks of injury, weapons, etc. ;

(8) forwards the report after signing it himself and getting it signed by the other persons to the District Magistrate or Sub-divisional Magistrate.

If the cause of death is doubtful he forwards the body with a view to its being examined to the nearest Civil Surgeon or other medical officer appointed by the Provincial Government, if the state of weather and the distance admit of its being so forwarded without risk of putrefaction (s. 174). The police-officer may by order in writing summon two or more persons for investigation and persons acquainted with the facts of the case and every such person is bound to answer truly all questions (s. 175).

**Inquest by a Magistrate.**—When any person dies in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and in cases reported under s. 174 he may, hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer. He may cause the dead body of any person to be disinterred and examined (s. 176).

## PART VI.

### PROCEEDINGS IN PROSECUTIONS.

**Jurisdiction of criminal Courts.—A.—Place of inquiry and trial.**—(1) Every offence is inquired into and tried by a Court within the local limits of whose jurisdiction it was committed (s. 177). [The Provincial Government may direct that any cases committed for trial in any district may be tried in different sessions divisions (s. 178).]

2. An offence is triable by a Court within whose jurisdiction (1) any act is done, or (2) any consequence of such act has ensued (s. 179).

3. When an act is an offence by reason of its relation to any other act which is an offence or which would be an offence if the doer were capable of committing an offence, it may be tried by a Court within whose jurisdiction either act was done (s. 180).

4. The offence of (1) being a thug, or (2) belonging to a gang of dacoits, or (3) escape from custody may be tried by a Court within whose jurisdiction the accused is (s. 181).

5. Criminal misappropriation and criminal breach of trust may be tried by a Court within whose jurisdiction (1) any part of the property was received or retained by the accused, or (2) the offence was committed (s. 181).

6. Theft or possession of stolen property may be tried by a Court within whose jurisdiction (1) the offence was committed, or (2) the property stolen was possessed (i) by the thief, or (ii) by any person who received or retained the same knowing it to be stolen (s. 181).

7. Kidnapping or abduction may be tried by a Court within whose jurisdiction the person was (1) kidnapped or abducted, or (2) conveyed, concealed or detained (s. 181).

8. (1) When it is uncertain in which of several local areas an offence was committed, or

(2) where an offence is committed partly in one local area and partly in another, or

(3) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(4) where it consists of several acts done in different local areas, it may be tried by a Court having jurisdiction over any of the local areas (s. 182).

9. An offence committed in the course of a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction (1) the offender, or (2) the person against whom, or (3) the thing in respect of which the offence was committed, passed in the course of that journey or voyage (s. 183).

10. Offences against Railway, Telegraph, Post-office, and Arms Acts may be tried in a presidency-town if the offender and all the witnesses for the prosecution are within such town (s. 184).

**Doubt as to jurisdiction.**—When a question arises as to which of two or more Courts, subordinate to the same High Court, ought to try any offence, it is decided by that High Court. Where the Courts are subordinate to different High Courts, the High Court within whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial to be held in any subordinate Court. If such High Court does not decide the point, any other High Court within whose appellate criminal jurisdiction such proceedings are pending may give a like direction (s. 185).

**Offence committed beyond local jurisdiction.**—When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or a first class Magistrate specially empowered, has reason to believe that any person within his jurisdiction has committed without it (whether within or without British India) an offence which cannot be tried within his jurisdiction, but is triable in British India, he may

(1) inquire into the offence as if it had been committed within his jurisdiction,

(2) compel such person to appear before him,

(3) send him to the Magistrate having jurisdiction to try such offence, or if the offence is bailable, take a bond for his appearance before such Magistrate. He may report the case to the High Court if there are more Magistrates than one having jurisdiction to try the offence (s. 186).

If such person has been arrested under a warrant issued by a subordinate Magistrate, he sends him to the District or Sub-divisional Magistrate to whom he is subordinate unless the Magistrate having jurisdiction to try the offence issues his warrant, in which case the person arrested is delivered to the officer executing the warrant or sent to that Magistrate (s. 187).

**Liability of British subjects for offences committed out of British India.**—(1) When a native Indian subject commits an offence beyond the limits of British India, or

(2) when any British subject commits an offence in the territories of any Native Chief in India, or



(3) when a servant of the King (British or Indian) commits an offence in the territories of a Native Chief in India, or

(4) where any person commits an offence on any ship or aircraft registered in British India wherever it may be,

he may be dealt with as if the offence has been committed at any place in British India where he may be found. But the offence is not inquired into in British India unless the Political Agent, if any, for the territory in which the offence is committed, certifies that it ought to be inquired into in British India. If there is no Political Agent, the sanction of the Provincial Government is required. Proceedings under this section are a bar to further proceedings under the Indian Extradition Act, 1903 (s. 188). When such offence is tried, the Provincial Government may direct that copies of depositions made or exhibits produced before the Political Agent or judicial officer shall be received in evidence by the trial Court (s. 189).

**B.—Conditions requisite for initiation of proceedings.—Cognizance of offences. 1.—By a Magistrate.**—Any Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, and any Magistrate specially empowered, may take cognizance of an offence upon

- (a) receiving a complaint ;
- (b) a police-report in writing ;
- (c) information from any person other than a police-officer ;
- (d) his own knowledge or suspicion (s. 190).

When a Magistrate takes cognizance of an offence upon information received from a person other than a police-officer or his own knowledge, the accused is informed that he is entitled to have the case tried by another Court, and, if the accused objects, the case is committed to the Court of Session or transferred to another Magistrate (s. 191). A Chief Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate may transfer a case of which he has taken cognizance to any Magistrate subordinate to him. A District Magistrate may empower a first class Magistrate to transfer a case to any other Magistrate competent to try or commit for trial (s. 192).

2. By a Court of Session.—A Court of Session does not take cognizance of an offence as a Court of original jurisdiction unless the accused has been committed to it by a competent Magistrate. Additional Sessions Judges and Assistant Sessions Judges try such cases as the Government may direct them to try or the Sessions Judge may make over to them (s. 193).

3. By a High Court.—The High Court may take cognizance of an offence upon a commitment made to it. The Advocate General may, with the sanction of the Provincial Government, exhibit to the High Court, against persons subject to its jurisdiction, informations similar to the Attorney General in the High Court in England. All fines, penalties, forfeiture, and money recovered under such information form part of the revenues of the Province (s. 194).

**Exceptions to the rule that any person may set the criminal law in motion.**—No Court takes cognizance of—

(1) Contempt of lawful authority of public servants, punishable under ss. 172 to 188, Penal Code, except on the complaint in writing of the public servant concerned, or the public servant to whom he is subordinate.

(2) Offences against public justice, punishable under ss. 198-196, 199, 200, 205-211, and 228, Penal Code, committed in any proceeding in any Court, except on the complaint in writing of such Court or the Court to which it is subordinate.

(3) Offences relating to documents given in evidence (s. 468), punishable under ss. 471, 475, 476, Penal Code, except on the complaint in writing of such Court or the Court to which it is subordinate (s. 195).

(4) Offences against the State punishable under Chapter VI (except s. 127 and in the Bombay Presidency and the Punjab s. 171F so far as it relates to personation), and ss. 108A, 153A, 294A, 295A, 505, Penal Code, unless upon complaint made by order of the Provincial Government (s. 196).

(5) Criminal conspiracy punishable under s. 120B, Penal Code, except upon complaint made by order of the Provincial Government. [Where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for two years or upwards, unless the Provincial Government, Chief Presidency Magistrate or District Magistrate specially empowered has by a written order consented to the initiation of the proceedings.] (s. 196A).

(6) Offence committed, while acting in the discharge of his duty, by (a) a Judge, (b) a Magistrate, or (c) a public servant not removable from office save by the Provincial Government or higher authority, except with the previous sanction (a) in the case of a person employed in connection with the affairs of the Federation, of the Governor-General exercising his judgment; and (b) in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province exercising his judgment. The Governor-General or the Governor may (1) determine the person by whom and the manner in which the prosecution is to be conducted, and (2) specify the Court before which the trial is to be held (s. 197).

(7) Offences falling under Chapter XIX or XXI, or ss. 493 to 496, Penal Code, except upon a complaint by some aggrieved person. Where such person is (1) a woman who according to custom ought not to be compelled to appear in public, or (2) under the age of eighteen years, or (3) an idiot or lunatic, or (4) from sickness or infirmity unable to make a complaint, some other person may with the leave of the Court make a complaint on his or her behalf (s. 198).

(8) Offence under s. 497 or 498, Penal Code, except upon a complaint by the husband of the woman, or, in his absence, with the leave of the Court, by some person who had care of such woman on his behalf when the offence was committed. When the husband is under eighteen years of age, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf (s. 199).

[If the person applying under s. 198 or s. 199 is not a legal guardian notice is given to the legal guardian, if any, before granting the application—s. 199A.]

**Complaints to Magistrates.—Examination of complainant.—**

**Chapter XVI.**

A Magistrate taking cognizance of an offence on complaint examines the complainant upon oath and the substance of the examination is reduced to writing and signed by the complainant and the Magistrate. Such examination is not necessary—

(1) when a complaint in writing is made by a Court or a public servant in the discharge of his official duties ;

(2) when a complaint in writing is made to a Presidency Magistrate, unless the Magistrate thinks fit to have the examination on oath or not ;

(3) when the case is transferred to another Magistrate under s. 192 after the complainant is examined (s. 200).

If a complaint is made to a Magistrate who is not competent to take cognizance of the case he (1) if the complaint is in writing, returns it for presentation to the proper Court, (2) if the complaint is oral, directs the complainant to the proper Court (s. 201). Any Magistrate on receipt of a complaint may, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either (1) inquire into the case himself, or (2) if he is a Magistrate other than a third class Magistrate, direct an inquiry or investigation by a subordinate Magistrate, or a police-officer, or any other person for ascertaining the truth or falsehood of the complaint. No such direction is made unless the complainant has been examined under s. 200, except where the complaint has been made by a Court. The Magistrate inquiring into a case may take evidence of witnesses on oath (s. 202). He may dismiss the complaint, if, after considering the statement on oath of the complainant and the result of the investigation or inquiry, there is no sufficient ground for proceeding. He must briefly record his reasons for so doing (s. 203). If there is sufficient ground for proceeding, he issues a summons for the attendance of the accused or warrant for causing him to be brought before him or other Magistrate having jurisdiction. No process is issued until proper fees are paid (s. 204, Chap. XVII). If a summons is issued, the Magistrate may dispense with the personal attendance of the accused and permit him to appear by his pleader (s. 205).

**Inquiry into cases triable by a Court of Session or High Court.**

**Chapter XVIII.**

—Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or first class Magistrate or any Magistrate specially empowered by the Provincial Government may commit any person for trial to the Court of Session or High Court. No person triable by the Court of Session is committed to the High Court (s. 206). When the case is exclusively triable, or ought to be tried, by a Court of Session or High Court, the following procedure is adopted (s. 207).

(1) The Magistrate, when the accused appears, proceeds to hear the complainant and takes evidence in support of the prosecution or on behalf of the accused, or as may be called for by the Magistrate.

(2) The accused is at liberty to cross-examine the witnesses for the prosecution, and the prosecutor may re-examine them.

(8) The Magistrate issues process, if applied for, to compel the attendance of any witness or the production of any document or thing (s. 208).

(4) When the evidence is taken and the accused is examined to explain any circumstances appearing against him, the Magistrate, if he finds that there are not sufficient grounds for committing the accused for trial, records his reasons and discharges the accused, unless he thinks of trying him before himself or another Magistrate. The accused may be discharged at any previous stage if he considers the charge to be groundless, recording his reasons (s. 209).

(5) After taking evidence and examining the accused, if the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he frames a charge declaring the offence with which he is charged (s. 210).

(6) The charge is read and explained to the accused, and a copy thereof is given to him free of cost (s. 210).

(7) The accused is required to give a list of his witnesses. The Magistrate may allow him to give a further list at a subsequent time. Where the accused is committed for trial to the High Court, he may give a further list to the Clerk of the Crown (s. 211).

(8) The Magistrate may summon and examine any witness named in the list (s. 212).

(9) After examining the witnesses the Magistrate may make an order committing the accused for trial by the High Court or Court of Session and, unless he is a Presidency Magistrate, briefly records the reasons for such commitment. But if he is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused (s. 213). A commitment can be quashed by the High Court only on a point of law (s. 215):

(10) When the accused has been committed for trial, the Magistrate summons such of the witnesses in the list given, as have not appeared before him, to appear before the Sessions Court. If any witnesses in the list are summoned for the purpose of vexation or delay, or defeating the ends of justice, the Magistrate may refuse to summon them until he is satisfied that their evidence is material or unless a sum is deposited to defray the expense of obtaining their attendance. Where the accused is committed to the High Court, the Magistrate may leave such witnesses to be summoned by the Clerk of the Crown (s. 216).

(11) Complainant and witnesses for the prosecution and defence who appear before the Magistrate execute bonds binding themselves to appear and give evidence before the Sessions Court or High Court. In case of refusal to attend such Court or to execute such bond, the Magistrate may detain the person refusing in custody until he executes such bond or until his attendance at the Court of Session or High Court is required (s. 217).

(12) The Magistrate notifies the commitment to the person appointed by the Provincial Government, and sends the charge, the

record of inquiry, and any weapon or thing to be produced in evidence to the Court of Session or the Clerk of the Crown if the commitment is made to the High Court (s. 218).

(13) The Magistrate may summon and examine supplementary witnesses after commitment and before trial and bind them over to appear and give evidence. Such examination is taken in the presence of the accused if possible, and where the Magistrate is not a Presidency Magistrate a copy of such evidence is given to the accused free of cost (s. 219).

(14) Pending trial the accused is kept in custody subject to the provisions regarding bail (s. 220).

**Charge.**—The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged is fulfilled. The

Chapter XIX. following are the essentials of a charge :—

(1) The charge should state the offence with which the accused is charged.

(2) If the offence has a specific name, it may be described by that name ; otherwise so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(3) The law and section of the law against which the offence is committed should be mentioned.

(4) In presidency-towns the charge should be in English; elsewhere it should be in English or in the language of the Court.

(5) If previous conviction of the accused is to be proved for affecting the sentence, the fact, date, and place of the previous conviction are stated (s. 221).

(6) Particulars as to the time and place of the offence, and the person against whom or the thing in respect of which it was committed.

(7) When the charge is of criminal breach of trust or dishonest misappropriation of money, it is sufficient to specify the gross sum in respect of which the offence is committed and the dates between which it is committed, provided the time between the first and the last date does not exceed one year (s. 222).

(8) Particulars of the manner in which the offence was committed if the accused has not sufficient notice otherwise (s. 223).

**Effect of errors.**—No error or omission in stating the offence or particulars is regarded as material unless the accused is misled by it and it has occasioned a failure of justice (s. 225). If any appellate Court or the High Court is of opinion that any person convicted of an offence was misled in his defence (1) by the absence of a charge, or (2) by an error in the charge, it directs a new trial. If no valid charge could be preferred against the accused, in respect of the facts proved, it quashes the conviction (s. 232).

**Commitment without a charge or imperfect charge or alteration in a charge.**—If there is commitment without a charge or with an imperfect or erroneous charge, the Court or the Clerk of the Crown (in the case of a High Court) may frame, add to, or alter the charge (s. 226). Any Court may alter or add to any charge at any time

before (1) judgment is pronounced, or (2) the verdict of the jury is returned or the opinions of the assessors are expressed (s. 227). After alteration or addition the trial may proceed if the accused or the prosecutor is not likely to be prejudiced (s. 228). If the new, altered or added charge is such that the accused or the prosecution is likely to be prejudiced if the trial proceeded immediately, the Court may direct a new trial or adjourn it (s. 229). If the offence in such charge requires previous sanction, the case is not proceeded with until the sanction is obtained (s. 230). If a charge is altered or added after the commencement of the trial, the prosecutor and the accused are allowed (1) to recall and examine with reference to such alteration or addition any witnesses who may have been examined, and (2) to call any further witnesses (s. 231).

**Joinder of charges.**—For every distinct offence there is a separate charge, and every such charge is tried separately (s. 233). To this the following are exceptions:—

(1) When a person is accused of more offences than one of the same kind committed within one year, in respect of the same person or not, he may be charged with and tried at one trial for any number of them not exceeding three (s. 234).

[Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Penal Code, or of any special or local law.]

(2) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.

(3) If the acts alleged constitute an offence falling within two or more definitions of any law, the person accused of them may be charged with and tried at one trial for each of such offences.

(4) If the acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, both the categories of offences (s. 235).

(5) Where it is doubtful what offence has been committed, the accused may be charged with all or any of the offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed someone of the offences (s. 236).

**Charge of one offence, conviction of another.**—(1) When a person is charged with one offence, and it appears in evidence that he has committed a different offence, he can be convicted of that offence (s. 237).

(2) When a person is charged with an offence consisting of several particulars, and some of the particulars constitute a minor offence, he may be convicted of such minor offence.

(3) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence.

(4) When a person is charged with an offence, he may be convicted of an attempt to commit it (s. 238).

**What persons may be charged jointly.**—The following persons may be charged and tried together:—

(1) persons accused of the same offence committed in the course of the same transaction;

(2) persons accused of an offence and persons accused of abetment or an attempt to commit it;

(3) persons accused of more than one offence of the same kind committed jointly within twelve months;

(4) persons accused of different offences committed in the course of the same transaction;

(5) persons accused of theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining or assisting in the disposal or concealment of property obtained in the commission of these offences;

(6) persons accused of offences under ss. 411 and 414 of the Penal Code;

(7) persons accused of an offence under Chap. XII, Penal Code, relating to counterfeit coin, and persons accused of any other offence relating to the same coin, or of abetment or attempt to commit such offence (s. 239).

**Withdrawal of charges on conviction.**—When a conviction takes place on one out of several heads of a charge, the complainant, or the prosecuting officer may, with the consent of the Court, withdraw the remaining charges, or the Court itself may stay inquiry into such charges. Such withdrawal has the effect of an acquittal on such charges, unless the conviction be set aside, in which case the Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into the charges so withdrawn (s. 240).

**Trial of summons-cases.**—The following procedure is observed by Magistrates in the trial of summons-cases (s. 241):—

Chapter XX.

(1) The particulars of the offence with which the accused is charged are stated to him, and he is asked if he has any cause to show why he should not be convicted. It is not necessary to frame a formal charge (s. 242).

(2) If he admits that he has committed the offence his admission is recorded in his own words, and if he shows no sufficient cause he may be convicted (s. 243).

(3) If the accused does not admit, or if the Magistrate does not convict, the Magistrate hears (a) the complainant and takes evidence in support of the prosecution, and (b) the accused and takes evidence for the defence. [If the complaint has been made by a Court, the Magistrate does not hear any other complainant. The Magistrate, on the application of the complainant, may issue a summons to any witness, and require that his expenses may be deposited in Court.]—(s. 244).

(4) If the Magistrate upon taking evidence and examining the accused finds the accused not guilty he records an order of acquittal.

(5) If he does not proceed under s. 349 (for severe sentence) or s. 362 (to release on probation for good conduct) he passes sentence if he finds the accused guilty (s. 245). [The Magistrate may convict the accused of the offence proved on facts to have been committed, whatever may be the complaint (s. 246).]

(6) If the complainant does not appear, the Magistrate acquits the accused, unless he adjourns the hearing. If the complainant is a public servant, and his personal attendance is not required, the Magistrate may proceed with the case (s. 247).

(7) Before a final order is passed, the complainant may withdraw the case on satisfying the Magistrate that there are sufficient grounds for doing so. The accused is thereupon acquitted (s. 248).

(8) In a case instituted otherwise than upon complaint, a Presidency Magistrate, first class Magistrate, or any other Magistrate with the sanction of the District Magistrate may stop the proceedings at any stage without pronouncing any judgment, and release the accused (s. 249).

**Frivolous accusations.**—If in any case the Magistrate discharges or acquits the accused, but is of opinion that the accusation was (1) false, and (2) either frivolous or vexatious, he may, by his order of discharge or acquittal, call upon the person, upon whose complaint or information the accusation was made

(a) if present, to show cause why he should not pay compensation to the accused (or to any of the accused if more than one);

(b) if he is not present, direct the issue of a summons to show cause as aforesaid.

If the Magistrate is satisfied that the accusation was false and either frivolous or vexatious, he may direct compensation not exceeding Rs. 100 to be paid by the complainant or informant to the accused or any of them. A third class Magistrate can award compensation up to Rs. 50. The Magistrate may order that in default of payment, such person shall suffer simple imprisonment not exceeding thirty days. Such person is not exempted from any civil or criminal liability in respect of the complaint or information, provided that any amount paid to the accused is taken into account in awarding compensation in a subsequent suit. When the order of compensation is made by a third class Magistrate, or when compensation exceeding fifty rupees is awarded, the complainant or informant may appeal from the order (s. 250).

**Trial of warrant-cases.**—The following procedure is observed by Chapter XXI. Magistrates in the trial of warrant-cases (s. 251):—

(1) The Magistrate hears the complainant and takes evidence in support of the prosecution. [He is not bound to hear any person where the complaint is by a Court. The Magistrate summons witnesses.]—(s. 252).

(2) After taking evidence and examining the accused, if he finds that no case against the accused has been made out he discharges him. He may discharge the accused at any previous stage, after recording his reasons, if the charge is groundless (s. 253).

(3) If he is of opinion that there is ground for presuming that the accused has committed an offence which he is competent to try and



which he could adequately punish, he frames a charge against the accused (s. 254).

(4) The charge is read and explained to the accused, and he is asked whether he is guilty or has any defence to make. If he pleads guilty, the Magistrate records the plea, and may convict him (s. 255).

[If a previous conviction is charged under s. 221 (7), and the accused does not admit it, the Magistrate may, after he has convicted the accused, take evidence in respect of it and record his finding (s. 255A).]

(5) If the accused refuses to plead, or does not plead, or claims to be tried, he is required to state whether he wishes to cross-examine any of the witnesses for the prosecution. The witnesses named by him are recalled for cross-examination and re-examination. Any other remaining witnesses for the prosecution are also examined. The accused is then called upon to enter upon his defence and produce his evidence. If the accused puts in any written statement, it is filed with the record (s. 256).

(6) If the accused applies for process for compelling the attendance of witnesses for giving evidence or production of any document or thing, the Magistrate issues the process unless he considers that such application is made for vexation or delay or for defeating the ends of justice. Such ground is recorded in writing (s. 257).

(7) If the Magistrate finds the accused not guilty he records an order of acquittal (s. 258).

(8) If the complainant is absent on the day of hearing, and the offence (a) may be compounded, or (b) is not a cognizable offence, the Magistrate may, at any time before the charge has been framed, discharge the accused (s. 259).

**Summary trials.**—The District Magistrate, first class Magistrate

Chapter XXII. specially empowered and Bench of first class Magistrates specially empowered may try in a summary

way the following offences :—

(1) offences not punishable with death, transportation or imprisonment not exceeding six months,

(2) offences relating to weights and measures,

(3) hurt,

(4) theft where the value of property does not exceed Rs. 50,

(5) dishonest misappropriation of property where its value does not exceed Rs. 50,

(6) receiving or retaining property where its value does not exceed Rs. 50,

(7) assisting in the concealment or disposal of stolen property where its value does not exceed Rs. 50,

(8) mischief,

(9) house-trespass,

(10) insult with intent to provoke a breach of the peace and criminal intimidation,

(11) abetment or attempt to commit any of the foregoing offences,

(12) offences under s. 20 of the Cattle Trespass Act, 1871:

In a summary trial if it appears to the Magistrate that it is undesirable to try the case summarily, he recalls witnesses who may have been examined and proceeds to hear the case in the ordinary manner (s. 260). The Provincial Government may invest a Bench of second or third class Magistrates with power to try summarily the following offences under the Penal Code :—(1) defiling public water, (2) making atmosphere noxious, (3) rash driving or riding, (4) dealing with fire or combustibles or explosives so as to endanger human life, (5) negligence to take order with animals, (6) public nuisance, (7) sale or possession of obscene books or objects, (8) singing obscene songs, (9) causing hurt or hurt on grave provocation, (10) act endangering human life or personal safety, (11) wrongfully restraining any person, (12) assault, (13) mischief, (14) criminal trespass, (15) insult to provoke breach of the peace, (16) offences against Municipal Acts and conservancy clauses of Police Acts which are punishable with fine only or with imprisonment not exceeding one month, (17) abetment or attempt to commit any of the foregoing offences (s. 261).

The following procedure is followed in summary trials :—

(1) The procedure prescribed for summons-cases is followed in summons-cases, and that prescribed for warrant-cases, in warrant-cases.

(2) No sentence of imprisonment exceeding three months is passed (s. 262).

(3) Where no appeal lies, the Magistrate need not record the evidence or frame a formal charge; but shall enter in the prescribed form the following particulars :—(1) the serial number, (2) the date of the offence, (3) the date of the report or complaint, (4) the name of the complainant, (5) the name, parentage and residence of the accused, (6) the offence complained of and the offence proved and the value of property in cases specified in s. 260, (7) the plea of the accused and his examination, (8) the finding, and, in the case of a conviction, a brief statement of the reasons, (9) the sentence or final order, (10) the date of the termination of the proceedings (s. 263).

(4) Where an appeal lies, the Magistrate before passing sentence, records a judgment embodying the substance of the evidence and the particulars stated in s. 263 (s. 264).

(5) The record and judgment are written by the presiding officer in English or in the language of the Court. Any Bench of Magistrates may be authorized by the Provincial Government to employ an officer to prepare the record or judgment, such record or judgment is signed by each member of the Bench. The record may be prepared by a member of the Bench and signed by all the members. If the Bench differ in opinion, any dissentient member may write a separate judgment (s. 265).

. **Trials before High Court.**—The following procedure is observed in a trial before the High Court. [‘High Court’

Chapter XXIII. means a High Court within the meaning of s. 219 of the Government of India Act, 1935, and includes such other Courts as the Provincial Government may declare to be High Courts for the purposes of Chapters XVIII and XXIII.]

(1) The trial is by jury (s. 267). [In criminal cases transferred to a High Court, the trial may be by jury (*ibid.*) ]

(2) At the commencement of the trial the charge is read out and explained to the accused, and he is asked whether he is guilty of the offence charged, or claims to be tried (s. 271).

Where there is also a charge relating to previous conviction, it is not read out and the accused is not asked to plead thereto. The prosecution does not refer to it, and no evidence is adduced thereon until

(a) he has been convicted of the subsequent offence, or

(b) the jury have delivered their verdict (s. 310). Evidence of previous conviction may be given if the fact of such conviction is relevant under the Evidence Act (s. 311).

(3) If he pleads guilty, the plea is recorded, and he may be convicted (s. 271).

(4) If he refuses to, or does not, plead, or if he claims to be tried, the Court proceeds to choose jurors (s. 272).

(5) If it appears to the Judge that any charge or portion of it is unsustainable, he may make on the charge an entry to that effect (s. 273). [Such entry has the effect of staying proceedings so far as that charge is concerned (*ibid.*) ]

(6) The jury consists of nine persons (s. 274).

(7) Where the accused is (i) a European British subject, or (ii) an Indian British subject, a majority of the jury shall, if he before the first juror is called and accepted so requires, consist of, in the first case, Europeans or Americans ; and, in the second case, Indians. Where the accused is a European (not a British subject) or an American, the majority of the jury shall consist of Europeans or Americans (s. 275).

(8) The jurors are chosen by lot. [If there is a deficiency of persons summoned, the jurors may be chosen from other persons present in Court.] (s. 276).

(9) The jurors are chosen from the special jury list if

(a) the accused is charged with having committed an offence punishable with death ; or

(b) the Judge, in any case, so directs (s. 276).

(10) As each juror is chosen, his name is called aloud and upon his appearance the accused or the prosecutor may take objection to him and state the grounds. Objection is allowed without grounds to the number of eight on behalf of the Crown and eight on behalf of the accused (s. 277). Every objection is decided by the Court and its decision is final (s. 279).

(11) The jurors, who have been chosen, appoint one of them to be foreman. If a majority of them do not agree, the Court appoints a foreman (s. 280). (The foreman (a) presides in the debates of the jury, (b) delivers the verdict of the jury, and (c) asks any information from the Court required by the jurors (*ibid.*) ]

(12) The jurors are then sworn under the Oaths Act (s. 281).

(13) The prosecutor then opens his case by reading from the Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused (s. 286).

(14) The prosecutor then examines his witnesses (s. 286).

(15) The examination of the accused before the committing Magistrate is tendered and read as evidence (s. 287).

(16) The evidence of a witness recorded in the presence of the accused may, if such witness is produced and examined, be treated as evidence in the case subject to the provisions of the Evidence Act (s. 288).

(17) When the examination of the witnesses for the prosecution and of the accused is concluded, the accused is asked whether he means to adduce evidence. If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, the Court may direct the jury to return a verdict of not guilty. If the accused says that he means to adduce evidence, but the Court considers—

(a) that there is no evidence of his guilt, the Court may direct the jury to return a verdict of not guilty;

(b) that there is evidence of his guilt (even when he does not mean to adduce evidence), the Court calls on the accused to enter on his defence (s. 289).

(18) The accused or his pleader may then open his case stating the facts or law on which he intends to rely and making comments on the prosecution evidence (s. 290).

(19) He may then examine his witnesses and after their cross-examination and re-examination may sum up his case (s. 290).

[The accused is allowed to examine any witness not previously named by him, if such witness is in attendance, but he is not, except as provided in ss. 211 and 281, entitled to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate (s. 291).]

(20) The prosecutor is entitled to reply—

(a) if the accused or any of them adduces oral evidence; or

(b) with the permission of the Court

(i) on a point of law, or

(ii) when any document which does not need to be proved is produced by any accused after he enters on his defence. The reply is restricted to comment on the document (s. 292).

(21) The Court then charges the jury, summing up the evidence for the prosecution and defence, and laying down the law for the guidance of the jury (s. 297).

(22) The jury may then retire to consider their verdict (s. 300).

(23) When the jury have considered their verdict, the foreman informs the Judge what their verdict or the verdict of the majority is (s. 301). If the jury are not unanimous, the Judge may require them to retire for further consideration (s. 302). If six of them are of one opinion the foreman, so informs the Judge [s. 305(2)].

(24) The jury must return a verdict on all the charges on which the accused is tried, and the Judge may ask them questions to ascertain their verdict. Such questions and answers are recorded (s. 303). When by

accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend it (s. 304).

(25) The Judge gives judgment according to the jury's opinion (a) if the jury are unanimous in their opinion, or (b) when six jurors are of one opinion and the Judge agrees with them. The Judge discharges the jury if he (a) disagrees with the majority, or (b) if there are not six who agree in their opinion (s. 305).

(26) When the jury is discharged the accused is tried by another jury unless the Judge considers that he should not be re-tried, in which case he is acquitted (s. 308).

**Trial before a Court of Session.**—The following procedure is observed—

(1) The trial is either by jury or with the aid of assessors (s. 268). [When the accused is charged with several offences of which some are, and some are not, triable by jury, he is tried by jury for those that are so triable, and by the Court with jurors as assessors for those that are not triable by jury—s. 269.]

(2) The prosecution is conducted by a Public Prosecutor (s. 270).

(3) At the commencement of the trial the charge is read out and explained to the accused and he is asked whether he is guilty of the offence charged, or claims to be tried (s. 271).

Where there is also a charge relating to a previous conviction it is not read out and the accused is not asked to plead thereto. The prosecution does not refer to it, and no evidence is adduced thereon until

(a) he has been convicted of the subsequent offence, or

(b) the jury have delivered their verdict, or the opinions of the assessors have been recorded.

Where the trial is with the aid of assessors the Court may drop the charge of previous conviction (s. 310). Evidence of previous conviction may be given if the fact of such conviction is relevant under the Evidence Act (s. 311).

(4) If he pleads guilty, the plea is recorded, and he may be convicted (s. 271).

(5) If he refuses to, or does not, plead, or if he claims to be tried, the Court proceeds to choose jurors (s. 272), or, if the trial is to be held with the aid of assessors, proceeds to choose assessors.

(6) The jury consists of such uneven number, not less than five or more than nine, as the Provincial Government decides for each district. Where the accused is charged with an offence punishable with death, the jury consists of seven or nine persons (s. 274).

Where the trial is with the aid of assessors, not less than three and, if practicable, four, are chosen from the persons summoned (s. 284).

(7) \*Where the accused is (a) an European British subject, or (b) an Indian British subject, a majority of the jury shall, if he before the first juror is called and accepted so requires, consist of, in the first case, Europeans or Americans; and, in the second case, Indians. Where the accused is an European (not British subject) or an American, the majority of the jury shall consist of Europeans or Americans (s. 275).

Where the trial is with the aid of assessors, all the assessors shall, if the accused before the first assessor is chosen so requires, in the case of European British subjects, be persons who are Europeans or Americans, or in the case of Indian subjects, be Indians. Where the accused is an European (not a British subject) or an American, and if he before the first assessor is chosen so requires, all the assessors shall be Europeans or Americans (s. 284A).

(8) The jurors are chosen by lot (s. 276).

(9) The jurors are chosen from the special jury list where the Provincial Government has declared that the trial of certain offences may be by special jury (s. 276).

(10) As each juror is chosen, his name is called aloud, and upon his appearance the accused or the prosecutor may take objection to him and state the grounds. Every objection is decided by the Court, and its decision is final (s. 279).

(11) The jurors who have been chosen appoint one of them to be foreman. If a majority of them do not agree, the Court appoints a foreman (s. 280).

(12) The jurors are then sworn under the Oaths Act (s. 281).

(13) When the jurors or assessors are chosen, the prosecutor opens his case by reading from the Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused (s. 286).

(14) The prosecutor then examines his witnesses (s. 286).

(15) The examination of the accused before the committing Magistrate is tendered and read as evidence (s. 287).

(16) The evidence of a witness recorded in the presence of the accused may, if such witness is produced and examined, be treated as evidence in the case subject to the provisions of the Evidence Act (s. 288).

(17) When the examination of the witnesses for the prosecution and of the accused is concluded, the accused is asked whether he means to adduce evidence. If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, the Court may direct the jury to return a verdict of not guilty. If the accused says that he means to adduce evidence but the Court considers

(a) that there is no evidence of his guilt, the Court may direct the jury to return a verdict of not guilty;

(b) that there is evidence of his guilt (even when he does not mean to adduce evidence), the Court calls on the accused to enter on his defence (s. 289).

(18) The accused or his pleader may then open his case stating the facts or law on which he intends to rely and making comments on the prosecution evidence (s. 290).

(19) He may then examine his witnesses and after their cross-examination and re-examination may sum up his case (s. 290).

[The accused is allowed to examine any witness not previously named by him, if such witness is in attendance, but he is not, except as

provided in ss. 211 and 231, entitled to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate (s. 291) ].

(20) The prosecutor is entitled to reply—

(a) if the accused or any of them adduces oral evidence, or

(b) with the permission of the Court

(i) on a point of law, or

(ii) when any document which does not need to be proved is produced by any accused after he enters on his defence.

The reply is restricted to comment on the document (s. 292).

(21) The Court then charges the jury, summing up the evidence for the prosecution and defence, and laying down the law for the guidance of the jury (s. 297).

Where the trial is with the aid of assessors the Court *may* sum up the evidence for the prosecution and defence and then requires each of the assessors to state his opinion orally on all the charges and records such opinion. It may ask the assessors such questions as are necessary to ascertain their opinion. The questions and answers are recorded. The Judge then gives judgment, but he is not bound to conform to the opinions of the assessors. If the accused is convicted, the Judge passes sentence unless he proceeds under s. 562 (s. 309).

(22) In cases tried by jury, after the Judge has finished his charge the jury may retire to consider their verdict (s. 300).

(23) When the jury have considered their verdict, the foreman informs the Judge what their verdict or the verdict of the majority is (s. 301). If the jury are not unanimous the Judge may require them to retire for further consideration (s. 302).

(24) The jury must return a verdict on all the charges on which the accused is tried, and the Judge may ask them questions to ascertain their verdict. Such questions and answers are recorded (s. 303). When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend it (s. 304).

(25) The Judge gives judgment according to the verdict of the jurors or of a majority of jurors, if he does not disagree with it. If the accused is acquitted, the Judge records judgment of acquittal; if he is convicted, the Judge passes sentence unless he proceeds under s. 562 (s. 306).

(26) If the Judge disagrees with the verdict and is of opinion that it is necessary for the ends of justice to submit the case to the High Court, he does so (s. 307).

**Points of difference between trial in the High Court and in Court of Session :—**

(1) In the High Court if it appears to the Judge that a charge is unsustainable, he makes an entry to that effect and proceedings on that charge are stayed (s. 273).

(1) The Sessions Court has no such power.

- (2) In the High Court the jury consists of nine persons (s. 274).
- (8) In the High Court objection to a juror is allowed without grounds to the number of eight on behalf of the Crown and eight on behalf of the accused (s. 277).
- (4) In the High Court the Judge is bound to give judgment according to the jury's opinion, if the jury are unanimous in their opinion, or when six jurors are of one opinion and the Judge agrees with them (s. 305).
- (5) In the High Court the Judge discharges the jury if he disagrees with the majority or if there are not six jurors who agree in opinion (s. 305). When the jury is discharged the accused is tried by another jury unless the Judge considers that he should not be retried in which case he is acquitted (s. 308).
- (2) In the Sessions Court the jury consists of not less than five or more than nine. In offences punishable with death the jury consists of seven or nine persons (s. 274).
- (8) In the Court of Session grounds of objection should be tioned.
- (4) In the Sessions Court the Judge gives judgment according to the verdict of the jurors or a majority of jurors if he does not disagree with it (s. 306).
- (5) In the Sessions Court if the Judge disagrees with the verdict and is of opinion that it is necessary for the ends of justice to submit the case to the High Court, he does so (s. 307).

#### **Points of difference between trial by jury and trial with the aid of assessors in a Court of Session—**

- (1) The jury consists of not less than five or more than nine. In offences punishable with death the jury consists of seven, and if practicable, nine persons (s. 274).
- (2) The jurors are chosen by lot from the persons summoned (s. 276).
- (8) The Judge sums up the evidence for the prosecution and defence and lays down the law for the guidance of the jury (s. 297).
- (4) The Judge gives judgment according to the verdict of the jurors or of a majority of jurors if he does not disagree with it (s. 306). If he disagrees with it, he submits the case to the High Court (s. 307).
- (1) The assessors are three or four (s. 284).
- (2) The assessors are selected by the Judge from the persons summoned (s. 284).
- (8) The Court may sum up the evidence for the prosecution and defence, and then requires each of the assessors to state his opinion orally on all charges and records such opinion (s. 309).
- (4) The Judge is not bound to conform to the opinions of the assessors (s. 309).



- (5) The verdict of the jury is expressed by the foreman. Individual opinions are not taken (s. 301).
- (5) Assessors are asked individually their opinion (s. 309).
- (6) The Judge records the heads of the charge to the jury (s. 367).
- (6) The Judge has to write a judgment [ (s. 309 (2) ) ].
- (7) A new juror is added or a new jury is chosen if any juror is prevented from attending, and the trial commences anew (s. 282).
- (7) If any assessor is prevented from attending, the trial proceeds with the aid of other assessors. If all the assessors are prevented from attending, then only a new trial is held (s. 285).

**Grounds of objection to a juror.**—A juror may be objected to on any of the following grounds :—

- (1) presumed or actual partiality in the juror ;
- (2) alienage, deficiency in qualification, under twenty-one years of age or above sixty years ;
- (3) relinquishment of all care of worldly affairs ;
- (4) holding office in or under the Court ;
- (5) doing or entrusted with police duties ;
- (6) conviction of an offence which, in the opinion of the Court, renders him unfit to serve on the jury ;
- (7) inability to understand the language in which the evidence is given, or the language in which it is interpreted ;
- (8) any other circumstance which, in the opinion of the Court, renders him improper as a juror (s. 278).

**Juror or assessor ceasing to attend.**—A new juror is added or a new jury is chosen if, before the return of the verdict, any juror is

- (1) prevented from attending throughout the trial, or
- (2) absents himself and it is not practicable to enforce his attendance, or
- (3) unable to understand the language in which the evidence is given or the language in which it is interpreted. The trial commences anew in each case (s. 282).

If in the course of a trial with the aid of assessors, at any time before the finding, any assessor is (1) prevented from attending throughout the trial, or (2) absents himself, and it is not practicable to enforce his attendance, the trial proceeds with the aid of the other assessors. If all the assessors are prevented from attending or absent themselves, the proceedings are stayed and a new trial is held with the aid of fresh assessors (s. 285).

**Sickness of prisoner.**—The judge may discharge the jury in such case (s. 283).

**Joint trial of Europeans and Indians.**—Where (1) an European or American is tried jointly with a person who is not an European or American, or (2) an Indian British subject is tried jointly with a person who is not an Indian, he and such other person may be tried together, but if he requires to be tried separately according to s. 275 or s. 284A, he is tried so (s. 285A).

**View by jury or assessors.**—When the Court thinks that the jury or assessors should view the place where the offence has been committed, or any other material place, the Court orders the jury or assessors to be conducted in a body under the care of an officer of the Court to such place. No person speaks to or holds any communication with the jury or assessors except with the permission of the Court (s. 293).

**Juror or assessor as witness.**—If a juror or assessor is personally acquainted with any relevant fact, he must inform the Judge, whereupon he may be examined as any other witness (s. 294).

**Locking up jury.**—The jury may be kept together, under the charge of an officer of the Court, if the trial is to last more than a day, or the Court may allow them to return to their homes (s. 296).

**Duty of Judge.**—It is the duty of the Judge—

- (1) to decide all questions of law as to
  - (i) relevancy of facts ;
  - (ii) admissibility of evidence ;
  - (iii) propriety of questions asked by parties ;
- (2) to prevent the production of inadmissible evidence ;
- (3) to decide upon the meaning and construction of documents ;
- (4) to decide upon all matters of fact necessary to prove in order to enable evidence of particular matters to be given ;
- (5) to decide whether any question is for himself or for the jury.

The Judge may in the course of his summing up express his opinion upon any question of fact or of mixed fact and law (s. 298).

**Duty of jury.**—It is the duty of the jury—

- (1) to decide which view of the facts is true and then return the verdict accordingly ;
- (2) to determine the meaning of all technical terms and words used in an unusual sense ;
- (3) to decide all questions of fact ;
- (4) to decide whether general indefinite expressions (not of legal procedure) do or do not apply to particular cases (s. 299).

**Procedure where Sessions Judge disagrees with verdict.**—If the Judge disagrees with the verdict and is of opinion that it is necessary for the ends of justice to submit the case to the High Court, he does so. He records the grounds of his opinion, and when the verdict is of acquittal he states the offence which he considers to have been committed. If the accused is further charged under s. 810, he proceeds to try him as if such verdict had been of conviction. When the Judge submits a case, he does not record judgment of acquittal or of conviction on any of the charges, but may either remand the accused to custody or admit him to bail. The High Court may exercise its powers in appeal, and consider the entire evidence and, after giving due weight to the opinions of the Judge and the jury, acquit or convict the accused, and in the latter case pass such sentence as might have been passed by the Court of Session (s. 307).

**List of jurors for High Court.**—The High Court may prescribe the number of persons for the special jury list (s. 312). The Clerk of the Crown before the first day of April in each year prepares (a) a list of

persons liable to serve as common jurors ; and (b) a list of those liable to serve as special jurors. Regard is paid to the property, character, and education of such persons. The Provincial Government may exempt any salaried servant of the Crown from serving as a juror (s. 313). The preliminary list of the jurors is published in the official Gazette before April 15 in each year. A revised list is published before May 1. Copies of the lists are affixed in the Court-house (s. 314). For each sessions the Clerk of the Crown summons a sufficient number of persons to serve on special or common juries. No person is so summoned more than once in six months unless the number cannot be made up without him. If in any sessions the number of persons summoned is not sufficient, other persons liable to serve are summoned (s. 315). If the High Court intends to hold its session at any place outside the presidency-town, the Court of Session at such place summons a sufficient number of jurors from its own list (s. 316). It may, if needful, after communication with the Commanding Officer, summon such number of commissioned or non-commissioned officers in His Majesty's Army or Air Force resident within ten miles of the place of sitting as it considers to be necessary to make up the jurors (s. 317). Any person who fails to attend, or who having attended departs without obtaining the permission of the Judge, is deemed guilty of a contempt, and is liable to a fine, and, in default of payment of such fine, to imprisonment for six months in the civil jail or till the fine is paid. The Court has a discretion to remit any fine or imprisonment so imposed (s. 318).

**List of jurors and assessors for Court of Session.**—All male persons between the ages of twenty-one and sixty are liable to serve as jurors or assessors within the district in which they reside (s. 319). The following persons are exempted from liability to serve as jurors or assessors :—

- (1) officers superior in rank to a District Magistrate ;
- (2) members of any Legislature in British India ;
- (3) salaried Judges ;
- (4) Commissioners and Collectors of Revenue or Customs ;
- (5) police-officers and persons engaged in Preventive Service in the Customs Department ;
- (6) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt ;
- (7) persons officiating as priests or ministers of religion ;
- (8) persons in the Army, Navy, or Air Force ;
- (9) surgeons and others who practise the medical profession ;
- (10) legal practitioners ;
- (11) Postal and Telegraph employees ;
- (12) persons exempted from appearance in Court under the Civil Procedure Code ;
- (13) other persons exempted by the Provincial Government (s. 320).

The Sessions Judge and the Collector prepare and make a list of persons liable to serve as jurors or assessors (s. 321). Copies of such list are stuck up in the office of the Collector and in the Court-houses of the District Magistrate and of the District Court and extracts therefrom in

some conspicuous place in the town near which the persons named in the extracts reside (s. 322). Along with the copies notices are published stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer at the Sessions Court-house at a particular time (s. 323). The Sessions Judge and the Collector or other officer hear objections and strike out the name of any person not suitable to serve as a juror or assessor or who may claim exemption under s. 820, and insert the name of any person omitted from such list whom they deem qualified. A copy of the revised list is signed by the Sessions Judge and the Collector or other officer and sent to the Court of Session. Such list is revised every year (s. 324). If in any district a special jury list is to be prepared for the trial of certain offences, the Sessions Judge and the Collector or other officer prepare a special list containing names of persons selected from the revised list who possess superior qualifications in respect of property, character or education (s. 325). The Sessions Judge sends, at least seven days before the day fixed for holding the sessions, a letter to the District Magistrate requesting him to summon not less than double the number of jurors or assessors required for any such trial. The names are drawn by lot in open Court excluding those who have served within six months. Where the accused is an European or an American, as many Europeans or Americans as may be required as jurors or assessors are summoned. If the proper number of Europeans or Americans cannot be obtained, the Court may summon any person exempted under s. 820 (s. 326). A summons to a juror or assessor is in writing, requiring his attendance at a particular time and place (s. 328). A servant of the Crown or a railway servant may be excused if the head of his office represents that he cannot serve as juror or assessor without inconvenience to the public (s. 329). The Court of Session may excuse any juror or assessor from attendance. At the conclusion of a trial by special jury, the Court may direct that such jurors shall not be summoned again for twelve months (s. 330). The Court keeps a list of jurors or assessors attending each session (s. 331). If a juror or assessor fails to attend or departs without permission he is liable to a fine not exceeding Rs. 100. Such fine is levied by the District Magistrate by attachment and sale of his movable property. The Court may remit or reduce any fine so imposed. In default of recovery of the fine, he may be imprisoned in the civil jail for fifteen days, unless such fine is paid before (s. 332).

**Nolle prosequi.**—Power of Advocate General to stay proceedings.—The Advocate General may, before the return of the verdict in a trial in High Court, inform the Court on behalf of the Crown that he will not further prosecute the accused upon the charge, and thereupon all proceedings are stayed and he is discharged. Such discharge does not amount to an acquittal unless the Judge otherwise directs (s. 333).

**High Court sittings.**—Every High Court shall hold its sessions on such days as the Chief Justice appoints (s. 334). The High Court will hold its sittings at such place as the Provincial Government may direct. With the consent of such Government it may hold its sittings at any place within the local limits of its appellate jurisdiction (s. 335).

**General provisions as to inquiry or trial.—Pardon.—**

Chapter XXIV. Pardon may be tendered in two ways—

1. The District Magistrate, Presidency Magistrate, Sub-divisional Magistrate or first class Magistrate may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to any of the following offences, tender a pardon to such person on condition of his making a full and true disclosure of the circumstances relative to the offence and to every other person concerned as principal or abettor—

(1) Offence triable exclusively by the High Court or Court of Session; (2) offence punishable with ten years' imprisonment; (3) offence punishable under s. 211, Penal Code, with seven years' imprisonment; (4) offences under ss. 216A, 369, 401, 485 and 477A.

The power under this section is exercised—

(a) where the offence is under *inquiry* or *trial* by the District Magistrate or the Magistrate making the inquiry or holding the trial;

(b) where it is under *investigation*, by the Magistrate having jurisdiction with the sanction of the District Magistrate.

The Magistrate records his reasons for tendering pardon and furnishes a copy to the accused. The person accepting a tender of pardon is examined as a witness in the Magistrate's Court as well as in the Sessions Court if the accused is committed to the Sessions. He is detained in custody, if he is not on bail, till the termination of the trial (s. 337).

2. The Court to which the commitment is made may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender of order the committing Magistrate or the District Magistrate to tender a pardon to such person on the above condition (s. 338).

The person to whom pardon is tendered may be tried for the offence in respect of which the pardon was tendered or for any other offence in respect of the same matter, if the Public Prosecutor certifies that he has (a) by wilfully concealing any essential thing, or (b) giving false evidence, not complied with the conditions on which the tender was made. He is not tried jointly with any other accused and is entitled to plead that he has complied with the conditions. The prosecution must then prove that such conditions have not been complied with. The statement made by the accused may be given in evidence against him. But prosecution for giving false evidence in respect of such statement is not entertained without the sanction of the High Court (s. 339). The Court trying such person shall (a) in the case of a High Court or Court of Session, before the charge is read out and explained to the accused, and (b) in the case of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made. If the accused so pleads, the Court records the plea and proceeds with the trial, and (a) the jury, or (b) the Court with the aid of assessors, or (c) the Magistrate, finds whether or not the accused has complied with the conditions of the pardon. If it is found that he has, the Court acquits him (s. 339A).

**Defence by pleader.**—Any person against whom proceedings are instituted may of right be defended by a pleader (s. 340).

**Accused as witness.**—Any person against whom proceedings are instituted under s. 107 or s. 552, or under Chapters X, XI, XII and XXXVI may offer himself as a witness (s. 340).

**Accused not understanding proceedings.**—If the accused (not insane) cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial. In the case of a Court other than a High Court, if such inquiry results in a commitment, or, if such trial results in a conviction, the proceedings are forwarded to the High Court, and the High Court passes thereon such order as it thinks fit (s. 341).

**Examination of the accused.**—The Court may at any stage of an inquiry or trial put questions to the accused to explain any circumstances appearing in the evidence against him, and it shall question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence. No oath is administered to him. The accused does not render himself liable to punishment by (a) refusing to answer such questions, or (b) giving false answers to them, but the Court or jury may draw such inference from such refusal or answers as it thinks just. The answers may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry or trial for any other offence which such answers may tend to show he has committed (s. 342).

**Influence to induce disclosures.**—No influence by means of any promise or threat is used to an accused to induce him to disclose or withhold any matter within his knowledge (s. 343).

**Postponement.**—The Court has power to postpone or adjourn any inquiry or trial if it is necessary owing to the absence of a witness or any other cause, and may remand the accused if in custody. Every order must be in writing (s. 344).

**Remand.**—Where the accused is remanded as above, the period of remand does not exceed fifteen days at a time. Remand may be made if there is evidence to raise a presumption that the accused may have committed an offence and it appears that further evidence may be obtained (s. 344).

**Compounding of offences.**—There are certain offences which may be compounded by the aggrieved persons (see p. 256); there are others which cannot be so compounded except with the permission of the Court (see p. 257).

(1) When an offence is compoundable, the abetment of or attempt to commit such offence is also compoundable.

(2) When the person who can compound the offence is under eighteen years, or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(3) When the accused has been (a) committed for trial, or (b) convicted and an appeal is pending, no composition is allowed without the leave of the Court (i) to which he is committed, or (ii) before which the appeal is to be heard.

(4) The High Court may allow any person to compound any offence which he is competent to compound.

(5) The composition of an offence has the effect of an acquittal of the accused with whom the offence has been compounded (s. 345).

**Transfer of a case by a Magistrate.**—If in the course of an inquiry or trial in any district it appears to the Magistrate that the case should be tried or committed for trial by some other Magistrate, he stays proceedings, and submits the case to any Magistrate to whom he is subordinate, or such other Magistrate as the District Magistrate directs. The Magistrate to whom the case is submitted may, if empowered, try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial (s. 346).

**Commitment when necessary.**—(1) If in any inquiry or trial it appears to a Magistrate that the case should be tried by the Court of Session or High Court, he commits the accused. If such Magistrate is not empowered to commit for trial, he proceeds under s. 346 (s. 347).

(2) When a person who has been convicted of an offence punishable under Chapter XII or XVII, Penal Code, with imprisonment for three years or upwards, is again accused of a similar offence, he may be committed to the Court of Session or High Court, if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for doing so. It may be transferred to a Magistrate invested with powers under s. 80. If the Magistrate is competent to try the case and is of opinion that he can pass an adequate sentence, he need not commit it (s. 348).

**When a Magistrate cannot pass adequate sentence.**—If a second or third class Magistrate is of opinion, after hearing the evidence, that the accused is guilty and that he ought to

(1) receive a punishment (a) different in kind from, or (b) more severe than that which he can inflict, or

(2) execute a bond under s. 106,

he may record his opinion and submit the proceedings and forward the accused to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate. If there are more accused than one and the Magistrate thinks it necessary to proceed in regard to any of them, then all may be forwarded together. The Magistrate to whom the proceedings are submitted may recall and examine any witness who has already given evidence, and take further evidence, and pass sentence or order. He cannot inflict punishment more severe than he is empowered to inflict under s. 82 and s. 88 (s. 349).

**Evidence recorded by different Magistrates.**—When a Magistrate, after hearing or recording the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction and is succeeded by another Magistrate, the latter Magistrate may

(1) act on the evidence already recorded, or

(2) act on the evidence partly recorded by his predecessor and partly by him, or

(3) re-summon the witnesses and re-commence the inquiry or trial.

But (1) the accused may demand that the witnesses be re-summoned and

re-heard; (2) the High Court or the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if the accused has been materially prejudiced, and order a new trial (s. 350).

**Change in Bench.**—No order or judgment of a Bench of Magistrates is invalid by reason of change in the constitution of the Bench (s. 350A).

**Détention of offenders.**—Any person attending a Court may be

(1) detained by it for inquiry into or trial of any offence of which it can take cognizance and which, from the evidence, may appear to have been committed; and

(2) proceeded against as though he had been arrested or summoned.

If the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has begun, the proceedings commence afresh and the witnesses are re-heard (s. 351).

**Courts to be open.**—The public generally may have access to the place in which any Court is held. The presiding Judge or Magistrate may order that the public or any person shall not have access to, or remain in, the room or building used by the Court (s. 352).

**Mode of taking evidence.**—Evidence taken under Chapters

Chapter XXV. XVIII, XX, XXI, XXII and XXIII is taken in the presence of the accused or his pleader (s. 353). In

inquiries by or trials (not summary) before (a) a Magistrate (not Presidency), or (b) a Sessions Judge, the evidence of witnesses is recorded as follows (s. 354):—

(I) **Summons-cases and minor offences.**—The Magistrate makes a memorandum of the substance of the evidence of each witness—

(1) in summons-cases (not tried before a Presidency Magistrate);

(2) in trials by a first or second class Magistrate of the offences under the Penal Code relating to (i) weights and measures, (ii) hurt, (iii) theft, dishonest misappropriation, receiving or retaining stolen property, and assisting in the concealment or disposal of stolen property, where the value of the property does not exceed Rs. 50, (iv) mischief, (v) house-trespass, (vi) insult with intent to provoke breach of the peace, (vii) criminal intimidation, (viii) abetment or attempt of the foregoing offences, (ix) Cattle Trespass Act, s. 20;

(3) in proceedings under s. 514.

The memorandum is written and signed by the Magistrate with his own hand. If the Magistrate is prevented from making it, he records the reason of his inability to do so and causes it to be made from his dictation in Court and signs it (s. 355).

(II) **Warrant-cases.**—In (1) warrant-cases tried before a Magistrate (not Presidency);

(2) trials before Courts of Session;

(3) inquiries under Chapters XII and XVIII;

the evidence of each witness is taken down in writing in the language of the Court (1) by the Magistrate or Judge, or (2) in his presence and hearing and under his personal direction and superintendence, and is signed by him. If the evidence is given in English, the Magistrate or



Judge may take it down with his own hand, and, unless the accused knows English, an authenticated translation in the language of the Court forms part of the record. When the evidence is given in any language other than the language of the Court, the Magistrate or Judge may take it down in that language with his own hand, or cause it to be taken down in his presence and hearing and under his direction and superintendence, and an authenticated translation in the language of the Court or English forms part of the record. Where the Magistrate or Judge does not take down in writing the evidence, he himself makes a memorandum in writing of the substance of what each witness deposes, and signs it (s. 356). The Provincial Government may give directions as to the language in which the evidence is to be recorded (s. 357). Evidence is taken down in the form of a narrative, but the Court may take down any particular question and answer (s. 359). The evidence of each witness is read over to him in the presence of the accused or his pleader. If the witness denies the correctness of any part of the evidence, the Magistrate or Judge may correct the same, or make a note of the objection adding his own remarks. If the witness does not understand the language in which the evidence is taken down, the evidence is interpreted to him (s. 360). When any evidence is given in a language not understood by the accused, or when he appears by pleader, not understood by his pleader, it is interpreted to the accused or his pleader in open Court in a language understood by him (s. 361).

(III) **Record of evidence in Presidency Magistrate's Court—*Appealable cases.***—In such cases the Presidency Magistrate takes down the evidence with his own hand, or causes it to be taken down in writing from his dictation in open Court. The evidence is signed by the Magistrate. It is taken down in the form of a narrative, but the Magistrate may take down any particular question or answer. The Magistrate makes a memorandum of the substance of the examination of the accused and signs it (s. 362).

***Non-appealable cases.***—In such cases it is not necessary to record the evidence or frame a charge (s. 362).

(IV) **Record of evidence in High Court.**—The High Court by general rule prescribes the manner in which evidence is taken down in cases coming before it (s. 365).

**Demeanour.**—The Sessions Judge or Magistrate records such remarks as he thinks material respecting the demeanour of a witness whilst under examination (s. 363).

**Examination of accused.**—When the accused is examined by any Court (other than a High Court or the Chief Court of Oudh) the whole of such examination, including every question and answer, is recorded in the language in which he is examined, or in the Court language, or in English, and such record is shown or read to him, or interpreted to him, and he is at liberty to explain or add to his answers. It is signed by the accused and by the Magistrate or Judge who certifies under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused. Where the examination is not recorded by the Magis-

trate or Judge, he himself makes a memorandum in writing and signs it. If he is unable to make such a memorandum he gives reasons. [This procedure does not apply to trials before Presidency Magistrates] (s. 364).

**Judgment.**—The judgment is pronounced (1) in open Court, (2) in the language of the Court, or in some language which the accused or his pleader understands. The whole of the judgment is read out if the Court is requested to do so by the prosecution or defence. The accused is, if in custody, brought up, or, if not in custody, is required by the Court to attend to hear judgment. But where his personal attendance has been dispensed with and (1) the sentence is of fine only, or (2) he is acquitted, it may be delivered in the presence of his pleader (s. 366).

**Contents of a judgment.**—The judgment

- (1) is written in the language of the Court or in English ;
- (2) contains the points of determination ;
- (3) contains the decision thereon with reasons ;
- (4) is dated and signed in open Court at the time of pronouncing it ;
- (5) specifies the offences and the section of law under which the conviction is made ;
- (6) specifies the sentence of punishment ;
- (7) if it is of acquittal, states the offence of which the accused is acquitted and directs that he be set at liberty ;
- (8) states the reasons why death sentence is not passed in the case of an offence punishable with death.

When it is doubtful under which of two sections, or two parts of the same section, the offence falls, the Court passes judgment in the alternative (s. 367).

In the case of a sentence of death, the sentence directs that the accused be hanged by the neck till he is dead. No sentence of transportation specifies the place to which the convict is to be transported (s. 368).

No Court, other than a High Court, alters or reviews its judgment, after it is signed, except to correct a clerical error (s. 369).

**Judgment in jury cases.**—In trials by jury the Court of Session records the heads of the charge, and need not write a judgment (s. 367). When the accused is sentenced to death, the Judge informs him of the period within which he may prefer his appeal (s. 371).

**Presidency Magistrate's judgment.**—Instead of recording a judgment a Presidency Magistrate records the following particulars :—

- (1) serial number of the case ;
- (2) date of the commission of the offence ;
- (3) name of the complainant ;
- (4) name of the accused and his parentage and residence ;
- (5) offence complained of or proved ;
- (6) plea of the accused and his examination ;
- (7) final order ;
- (8) date of such order ;

(9) When the sentence is of imprisonment or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction (s. 370).

**Copy of judgment.**—A copy of the judgment or a translation in the language of the Court or of the accused is given to him on application free of cost without delay, except in summons-cases (s. 371).

**Submission of sentences for confirmation.**—When a sentence of death is passed, the proceedings are submitted to the High Court, and the sentence is not executed unless it is confirmed (s. 374). If the High Court thinks that a further inquiry should be made, or additional evidence taken, it may make such inquiry or take evidence or direct the Sessions Court to do it. This is not done in the presence of jurors or assessors. The presence of the convicted persons may be dispensed with unless the High Court directs otherwise (s. 375).

The High Court may—

(1) confirm the sentence or pass any other sentence; [no order of confirmation is made until the period allowed for appeal has expired, or if there is an appeal, until it is disposed of];

(2) annul the conviction and

(i) convict the accused of any offence of which the Sessions Court might have convicted him, or

(ii) order a new trial;

(3) acquit the accused.

The confirmation of the sentence or any new order passed by the High Court is signed by two Judges (s. 377). When a Bench of Judges are equally divided in opinion, the case is laid before another Judge and the judgment or order follows the opinion of that Judge (s. 378). The order of confirmation or any other order is forwarded to the Sessions Court (s. 379).

**Submission of proceedings to Magistrates.**—Where proceedings are submitted to a first class Magistrate or a Sub-divisional Magistrate under s. 562, such Magistrate may pass such sentence or order as he might have passed or made if the case had originally been heard by him. If he thinks further inquiry or additional evidence necessary, he may do so himself or direct it to be done (s. 380).

**Execution.—Sentence of death.**—The Sessions Court carries into effect the order of confirmation of sentence of death or any other order passed by the High Court by issuing a warrant or taking other steps (s. 381). If a woman sentenced to death is pregnant, the High Court may order the execution of sentence to be postponed or it may commute the sentence to transportation for life (s. 382).

**Sentence of transportation or imprisonment.**—The Court passing the sentence forwards the warrant to the jail in which the accused is, or is to be confined, and, if he is not confined, forwards him to such jail with the warrant (s. 383). The warrant is directed to the jailor (s. 384), and is lodged with him (s. 385), and it may be issued.

by the Judge or Magistrate who passed the sentence or his successor (s. 389).

**Recovery of fine.**—When a sentence of fine is inflicted, the Court may issue

(a) a warrant for attachment and sale of movable property of the offender :

[if the property is outside the jurisdiction of the Court, the warrant may be endorsed by the District Magistrate or the Chief Presidency Magistrate within whose jurisdiction the property is (s. 387) ] ;

(b) a warrant to the Collector to realize the amount by execution according to civil process against both movable and immovable property of the defaulter.

The warrant is deemed to be a decree and the nearest civil Court by which a decree for the like amount could be executed is deemed to be the Court which passed the decree. No such warrant is executed by the arrest or detention in prison of the offender.

If the offender has undergone the imprisonment inflicted in default of payment of fine, the Court does not issue such warrant unless for special reasons to be recorded in writing it deems it necessary to do so (s. 386).

**Suspension of sentence of imprisonment.**—When an offender has been sentenced to fine only and to imprisonment in default of fine, and the fine is not paid, the Court may

(1) order that the full fine shall be paid within thirty days ; or in two or three instalments, the first of which shall be payable within thirty days and the others at an interval of not more than thirty days ;

(2) suspend the execution of sentence of imprisonment and release the offender on his executing a bond for his appearance before the Court on the date on which the fine or the instalment is to be paid, and if it is not paid the Court may direct the sentence of imprisonment to be carried into effect (s. 388).

**Sentence of whipping.**—Such sentence is executed at such place and time as the Court may direct (s. 390).

When the accused is sentenced to

(1) whipping only and furnishes bail for his appearance, or

(2) whipping in addition to imprisonment,

the whipping is not inflicted until fifteen days from the date of sentence, or, if an appeal is made within that period, until the sentence is confirmed.

The whipping is inflicted in the presence of the jailor, unless the Judge or Magistrate orders it to be inflicted in his own presence. When the term of imprisonment is less than three months, no sentence of whipping in addition to imprisonment is passed (s. 391). In the case of a person over sixteen years of age, whipping is inflicted with a light rattan not less than half-an-inch in diameter on such part of the person as the Provincial Government directs. In the case of a person under sixteen years of age it is inflicted according to the directions of the Provincial Government. Whipping does not exceed thirty stripes : in the case of a person under sixteen years of age, it does not exceed fifteen (s. 392). It is not executed by instalments. The following persons

are exempted from such punishment—

- (1) females;
- (2) males sentenced to (a) death, or (b) transportation, or (c) penal servitude, or (d) imprisonment for more than five years;
- (3) males over forty-five years of age (s. 393);
- (4) persons who are not in a fit state of health in the opinion of a medical officer or the Magistrate or other officer who is present (s. 394).

Where such punishment is not inflicted owing to the state of health of the offender, he is kept in custody till the Court revises the sentence. The Court may remit the sentence, or in lieu of it sentence the offender to imprisonment for a term not exceeding twelve months, or to a fine not exceeding Rs. 500 in addition to any other punishment to which he may have been sentenced. Such imprisonment or fine depends upon the competency of the Court (s. 395).

**Sentence on escaped convicts.**—When sentence is passed on an escaped convict, such sentence

- (1) if of death, fine, or whipping, takes effect immediately,
- (2) if of imprisonment, penal servitude or transportation, takes effect as follows :—

(a) if the new sentence is severer in kind than the sentence he was undergoing, it takes effect immediately;

(b) If the new sentence is not severe, it takes effect after he has suffered imprisonment, penal servitude or transportation which remained unexpired at the time of his escape.

A sentence of (1) transportation or penal servitude is deemed severer than imprisonment; (2) imprisonment with solitary confinement, severer than imprisonment only; (3) rigorous imprisonment, severer than simple imprisonment with or without solitary confinement (s. 396).

**Sentence on offender already sentenced.**—When a person undergoing a sentence of imprisonment, penal servitude, or transportation is sentenced to imprisonment, penal servitude or transportation, the latter sentence commences at the expiration of the former sentence unless the Court directs that the subsequent sentence runs concurrently with the previous sentence. But (1) if he is undergoing imprisonment, and the subsequent sentence is of transportation, the Court may direct that the latter sentence commences immediately or at the expiration of the sentence of imprisonment;

(2) if a person imprisoned under an order under s. 128 is sentenced to imprisonment for an offence committed prior to such order, the latter commences immediately (s. 397). When imprisonment in default of payment of fine is annexed to a substantive sentence of imprisonment, transportation or penal servitude, and subsequently another sentence of imprisonment, transportation or penal servitude is inflicted, the imprisonment in default of payment of fine is not given effect to till the further sentence is undergone (s. 398).

**Youthful offenders.**—When a person under fifteen years of age is sentenced to imprisonment, the Court may direct that instead of being imprisoned in a jail he shall be confined to a reformatory (s. 399).

**Return of warrant.**—When a sentence has been executed, the officer executing it returns the warrant to the Court which issued it with an endorsement certifying the manner in which it has been executed (s. 400).

**Suspension, remission or commutation of sentences.**—

**Chapter XXIX. Powers to suspend or remit sentences.**—When a person has been punished for an offence, the Provincial Government may, with or without conditions, suspend the execution of the sentence or remit the whole or any part of the punishment. When an application is made to the Provincial Government for suspension or remission of a sentence, the Provincial Government may require the Judge who convicted or confirmed the sentence to state his opinion, with reasons whether the application should be granted or refused and to forward with the opinion a certified copy of the record of the trial. If any condition on which a sentence has been suspended or remitted is not fulfilled, the Provincial Government may cancel the suspension or remission, and the person in whose favour the suspension or remission was made may be arrested by any police-officer without warrant and remanded to undergo the unexpired sentence.

The above provisions apply to any order passed by a criminal Court which (1) restricts the liberty of a person, or (2) imposes any liability upon him or his property. They do not affect the right of His Majesty or the Central Government to grant pardons, reprieves, respites, or remissions of punishment. Where a conditional pardon is granted by His Majesty or the Central Government, any condition thereby imposed is deemed to have been imposed by a sentence of a competent Court and is enforceable accordingly (s. 401).

**Power to commute punishment.**—The Provincial Government may commute any one of the following sentences to any other mentioned after it—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine (s. 402).

**Previous acquittals or convictions.**—A person, (1) who has once been tried for an offence, (2) by a competent Court, and (3) convicted or acquitted of such offence, (4) is not, while such conviction or acquittal remains in force, (5) liable to be tried again for the same offence, (6) nor on the same facts for any other offence for which a different charge might have been made under s. 286, or for which he might have been convicted under s. 287. But

(1) a person acquitted or convicted of any offence may be tried for any distinct offence for which a separate charge might have been made against him under s. 285 (1);

(2) A person convicted of an offence constituted by any act causing consequences which, together with such act, constituted a different offence from that for which he was convicted, may be tried for such offence if the consequences had not happened, or were not

known to the Court to have happened, when he was convicted ;

(8) a person acquitted or convicted of an offence may be tried for any other offence if the Court by which he was first tried was not competent to try the subsequent offence (s. 403).

**Appeals.**—No appeal lies from any judgment or order of a criminal Court except as provided for by this Code or by any other law (s. 404).

**Chapter XXXI.** **Appeal from orders.**—(1) Order rejecting application for delivery of property or proceeds of the sale thereof is appealable to the Court to which appeals ordinarily lie (s. 405).

(2) Order requiring security for keeping the peace or for good behaviour is appealable

(i) to the High Court, if made by a Presidency Magistrate ;  
(ii) to the Court of Session, if made by any other Magistrate (s. 406.) [The Provincial Government may notify that any such appeal shall lie to the District Magistrate and not to the Court of Session (*ibid.*)]

(3) Order refusing to accept or rejecting a surety under s. 122 is appealable

(i) to the High Court, if made by a Presidency Magistrate ;  
(ii) to the Court of Session, if made by a District Magistrate ;  
(iii) to the District Magistrate, if made by a subordinate Magistrate (s. 406A).

There are other orders from which an appeal would lie, viz., order to pay compensation under s. 250 ; order of forfeiture of bonds under s. 514 ; order for disposal of property under s. 517 ; order to pay an innocent purchaser of property under s. 519 ; order for disposal of property under s. 524 ; and an order passed under s. 562.

**Appeal from sentences.**—(1) Appeal from a sentence passed by a second or third class Magistrate lies to the District Magistrate (s. 407). [The District Magistrate may direct that appeals may be presented to a first class Magistrate specially empowered, and may transfer appeals to such Magistrate or withdraw them (*ibid.*)]

(2) Appeal from a sentence passed by an Assistant Judge, a District Magistrate, or a first class Magistrate lies to the Court of Session. But it will lie to the High Court—

(i) when an Assistant Judge or a Magistrate specially empowered under s. 30 passes a sentence of (a) imprisonment exceeding four years, or (b) transportation ;

(ii) when a person is convicted by a Magistrate of sedition (s. 408).

(3) Appeal from sentence of Court of Session lies to the High Court (s. 410.)

(4) Appeal from a sentence of imprisonment exceeding six months or fine exceeding Rs. 200, passed by a Presidency Magistrate, lies to the High Court (s. 411).

(5) Any person convicted in a High Court Sessions trial may appeal to the High Court—

(a) against the conviction on a matter of law ;

- (b) with the leave of the appellate Court, or upon the certificate of the Judge who tried the case that it is a fit case for appeal, against the conviction on a matter of fact or of mixed law and fact or on any ground which appears to be sufficient to the appellate Court;
- (c) with the leave of the appellate Court against the sentence, unless it is a sentence fixed by law.

The Provincial Government may direct the Public Prosecutor to present an appeal from any order of acquittal passed in a High Court Session, and such appeal may lie on a matter of fact or of law.

The appeal will be heard by a Division Bench composed of not less than two Judges, other than the Judge who held the trial (s. 411A).

(6) An appeal shall lie to His Majesty in Council from any order made by a Division Court on appeal from a conviction in the High Court Session (s. 411A).

(7) When more persons than one are convicted in one trial, and an appealable sentence has been passed in respect of any of them, all have a right of appeal (s. 415A).

**Cases in which no appeal lies.**—(1) Where the accused pleads guilty and has been convicted by a High Court, Court of Session or Presidency Magistrate or first class Magistrate, the appeal lies only as to the extent or legality of the sentence (s. 412);

(2) where a Court of Session passes a sentence of imprisonment not exceeding one month or a High Court passes a sentence of imprisonment not exceeding six months (s. 413);

(3) where a High Court passes a sentence of fine not exceeding two hundred rupees, or a Court of Session or District Magistrate or first class Magistrate passes a sentence of fine not exceeding Rs. 50 (s. 413);

(4) where a sentence of imprisonment is inflicted in default of payment of fine but there is no substantive sentence of imprisonment (s. 413);

(5) where in a summary case the sentence is of fine not exceeding Rs. 200 (s. 414).

[An appeal may be brought against any sentence referred to in s. 413 or s. 414 by which any punishment is combined with any other punishment. Sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined (s. 415).]

**Appeal from acquittal.**—The Provincial Government may direct the Public Prosecutor to present an appeal to the High Court from an order of acquittal (s. 417).

**Appeal on what matters admissible.**—An appeal lies on a matter of fact as well as a matter of law. But where the trial is by jury, appeal lies on matter of law only. Severity of sentence is deemed to be a matter of law. If in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial may appeal on a matter of fact as well as a matter of law (s. 418).



**Petition of appeal.—Appeal**

- (1) is made in the form of a petition in writing;
- (2) is presented by the appellant or his pleader [if the appellant is in jail the petition is presented to the jailor who forwards it to the proper Court (s. 420)]; and
- (3) should be accompanied by a copy of the judgment or order appealed against, and in jury trials, by a copy of the heads of the charge to the jury (s. 419).

**Powers of appellate Court in disposing of appeal.**—(1) It peruses the petition, and if there is no sufficient ground for interfering, it may dismiss the appeal summarily. An appeal presented to the Court by the appellant or his pleader is not so dismissed unless he had reasonable opportunity of being heard (s. 421).

(2) If the appellate Court does not dismiss the appeal summarily, it shall give notice to the appellant or his pleader, and to the proper officer of Government, of the time and place at which it will be heard (s. 422). The appellate Court then sends for the record, and (a) after perusing it, and (b) hearing the appellant or his pleader and the Public Prosecutor and the accused (in case of an appeal from acquittal) dismisses the appeal if there is no sufficient ground for interfering.

- (3) It may, in an appeal from an order of acquittal,
  - (a) reverse such order, and direct
    - (i) further inquiry, or
    - (ii) re-trial of the accused, or
    - (iii) commitment for trial, or
  - (b) find the accused guilty and pass sentence on him.
- (4) It may, in an appeal from conviction,
  - (a) reverse the finding and sentence, and
    - (i) acquit or discharge the accused, or
    - (ii) order him to be re-tried by a Court of competent jurisdiction or committed for trial; or
  - (b) alter the finding, maintaining the sentence; or
  - (c) reduce the sentence; or
  - (d) alter the nature of the sentence but not so as to enhance the same.

(5) It may, in an appeal from an order, alter or reverse such order.

(6) It may make any amendment or any consequential or incidental order that may be just or proper.

(7) It may alter or reverse the verdict of a jury if it is of opinion that the verdict is erroneous (a) owing to a misdirection by the Judge, or (b) to a misunderstanding on the part of the jury of the law as laid down by him. Otherwise it does not alter it (s. 423).

(8) It may, after recording its reasons, take additional evidence or direct it to be taken by a Magistrate. The High Court may direct the Court of Session or a Magistrate to take it. [The accused or his pleader is present when such evidence is taken but not jurors or assessors.] (s. 428). Judgment or order of appellate Court is final, except (1) under s. 417, when Government chooses to appeal from an order

of acquittal (s. 417), and (2) in cases of revision (Chap. XXXIII) (s. 430).

**Judgment of appellate Court.**—The rules as to the judgment of a criminal Court of original jurisdiction apply to the judgment of an appellate Court other than a High Court. But the accused is not brought up, or required to attend to hear judgment (s. 424).

**Order of High Court to be certified to lower Court.**—The High Court certifies its judgment or order to the Court by which the finding, sentence, or order appealed against, was passed. The certificate is sent through the District Magistrate to subordinate Magistrates. The Court to which the High Court certifies its judgment or order makes such orders as are conformable to it (s. 425).

**Suspension of sentence or arrest of accused pending appeal.**—Pending any appeal by a convicted person, the appellate Court or the High Court may, for reasons to be recorded in writing, order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail or on his own bond. When a person convicted of a bailable offence is sentenced to imprisonment and an appeal lies from that sentence, the Court may, on being satisfied that, he intended to appeal, order that he be released on bail for a period sufficient to enable him to present the appeal and obtain an order of the Appellate Court for his release on bail or on his own bond (s. 426).

When an appeal is presented from an order of acquittal, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court and committed to prison pending the appeal (s. 427).

**Difference among Judges.**—When the Judges composing the Court of appeal are equally divided in opinion, the case, with their opinions, is laid before another Judge, and such Judge, after hearing, delivers his opinion and the judgment or order follows such opinion (s. 429).

**Abatement of appeals.**—Appeal

- (1) from acquittal abates on the death of the accused;
- (2) in any other case (except from a sentence of fine) on the death of the appellant (s. 431).

**Chapter XXXII. Reference.**—By a Presidency Magistrate.—A Presidency Magistrate may

(1) refer for the opinion of the High Court any question of law arising in a case,

(2) give judgment in such case subject to the decision of the High Court on such reference.

Pending such decision, he may commit the accused to jail or release him on bail (s. 432).

The High Court passes such order as it thinks fit, and sends a copy of it to the Magistrate to dispose of the case conformably to it (s. 433).

**Power to call for record of an inferior Court.**—The High Court, a Sessions Judge, a District Magistrate, or any Sub-divisional

Magistrate specially empowered, has power—

(1) to call for and examine the record of any proceeding before an inferior criminal Court, within its or his jurisdiction, for the purpose of satisfying itself or himself as to

(i) the correctness, legality, or propriety, of any finding, sentence, or order;

(ii) regularity of any proceedings of such Court;

(2) to direct that the execution of any sentence be suspended, and the accused, if in confinement, be released on bail or on his own bond pending the examination of the record.

If a Sub-divisional Magistrate considers that any finding, sentence or order is illegal or improper or any proceedings are irregular, he forwards the record with his remarks to the District Magistrate (s. 435).

Where any proceeding of a Presidency Magistrate is called for by the High Court, the Magistrate may submit a statement of the grounds of his decision or order and any material facts, and the Court considers such statement before setting aside his decision or order (s. 441).

**Inquiry.**—The High Court or the Sessions Judge, on examining the record, may direct the District Magistrate by himself or by any subordinate Magistrate to make further inquiry into

(1) any complaint which has been dismissed because

(i) there was no sufficient ground for proceeding, or

(ii) no process fees were paid, or

(2) the case of any person accused of an offence who has been discharged, provided he had an opportunity of showing cause why such direction should not be made (s. 436).

**Commitment.**—If, on examining the record, the Sessions Judge or District Magistrate considers that the case is triable exclusively by a Court of Session and that an accused has been improperly discharged, he may cause the accused to be arrested, and, instead of directing a fresh inquiry order him to be committed for trial. But (1) the accused must be given an opportunity of showing cause why the commitment should not be made; and (2) if the evidence shows that some other offence has been committed, the Judge or Magistrate may direct the inferior Court to inquire into such offence (s. 437).

**Report to High Court.**—The Sessions Judge or District Magistrate may, on examining the record, report for the orders of the High Court the result of such examination, and if he reports that a sentence be reversed or altered he may suspend the sentence, and if the accused is in confinement release him on bail (s. 438).

**Revision.**—The High Court, in the case of any proceeding (a) the record of which has been called for, or (b) which has been reported for orders, or (c) which otherwise comes to its knowledge, may

(1) exercise the powers

(i) of an appellate Court in disposing of an appeal (s. 428),

(ii) of suspending a sentence pending an appeal (s. 426),

(iii) of arresting the accused in an appeal from acquittal (s. 427).

(iv) of taking of further evidence (s. 428),

(v) of tendering pardon (s. 388),

(2) enhance the sentence. [If a sentence is passed by a Magistrate not specially empowered, the Court does not inflict a greater punishment than might have been inflicted for such offence by a Presidency Magistrate or first class Magistrate.]

If the Judges composing the Court are equally divided in opinion, the case is placed before another Judge, and the judgment or order follows this opinion.

The accused is given an opportunity of being heard personally or by pleader in his defence. He is also entitled to show cause against his conviction.

The High Court is not authorized to convert a finding of acquittal into one of conviction.

If an appeal lies, but no appeal is brought, proceedings by way of revision are not entertained at the instance of the party who could have appealed (s. 439).

No party has a right to be heard either personally or by pleader before a Court exercising powers of revision. But the Court may hear any party (s. 440).

When a case is revised by the High Court, it certifies its decision or order to the Court which recorded the finding, sentence or order, and the Court makes orders conformably to it (s. 442).

**Special proceedings.—Cases in which European and Indian British subjects are concerned.**—In the course of a trial outside a presidency-town, of an offence punishable with imprisonment, if the accused claims before

#### Chapter XXXIII.

- (i) he is committed for trial under s. 213, or
- (ii) he is asked to show cause under s. 242, or
- (iii) he enters on his defence under s. 256,

that the case be tried under the provisions of this Chapter, the Magistrate, after making inquiry and allowing the accused to adduce evidence in support of his claim, if satisfied

(1) that the complainant and the accused or any of them are respectively European and Indian British subjects or Indian and European British subjects, or

(2) that in view of the connection with the case of both an European British subject and an Indian British subject,

it is expedient for the ends of justice that the case should be tried under this Chapter, records a finding that the case ought to be tried under this Chapter, or, if he is not so satisfied, records a finding that it is not such a case.

If he rejects the claim, an appeal lies to the Sessions Judge, whose decision is final. He stays the proceedings until the period of appeal is over, or until the appeal is decided (s. 443).

'Complainant' means

- (1) any person making a complaint, or
- (2) in relation to any case of which cognizance is taken under cl. (b) of s. 190, sub-section (1), any person who has given information relating to the commission of the offence within the meaning of s. 154.

A Public Prosecutor, a public servant, a member, officer, or servant of any local authority, a railway servant, and an officer or servant of any company or association to which this section is made applicable, is not deemed to be a complainant by reason of the fact that he has made a complaint. Similarly, a police-officer making a report under s. 178 is not deemed to be a complainant (s. 444).

**Summons-case.**—Where a case to be tried under this Chapter is a summons-case, the Magistrate directs that the case be referred to a Bench of two Magistrates and sends a copy of the order to the District Magistrate who provides for the constitution of a Bench of two Magistrates of the first class, of whom one is an European and the other an Indian.

If the Bench Magistrates differ in opinion, the case with their opinions is laid before the Sessions Judge, who may examine any party or witness and may take further evidence, and pass judgment, sentence or order.

A person convicted by a Bench has the same right of appeal as if he had been convicted by a first class Magistrate. A person convicted by a Sessions Judge has the same right of appeal to the High Court as if he had been convicted at a trial held by the Sessions Judge.

If it is impracticable to constitute a Bench, the District Magistrate transfers the case to such other district as the High Court may direct.

The Provincial Government may by notification direct that all summons-cases shall be tried as warrant-cases in accordance with the provisions laid down for the trial of warrant-cases (s. 445).

**Warrant-case.**—When a case to be tried under this Chapter is a warrant-case, the Magistrate, if he does not discharge the accused under s. 209, or s. 253, commits the case for trial to the Court of Session. When the accused is so committed, the Court proceeds to try the case, and the provisions of s. 275 and of Chapter XXIII apply. But where the trial before the Court of Session would be with the aid of assessors, and the accused requires to be tried in accordance with s. 284A, the trial is held with the aid of assessors, all of whom are, in the case of European British subjects, Europeans or Americans, and, in the case of Indian British subjects, Indians (s. 446).

**Information to the accused.**—If at any stage of an inquiry or trial it appears to the Magistrate that the case is such as ought to be tried under this Chapter, he must inform the accused of his rights under this Chapter (s. 447).

**Appeal.**—An appeal may lie to the High Court on a matter of fact as well as on a matter of law, where

(1) a case is tried by jury in a High Court or Court of Session under this Chapter; or

(2) a case which would otherwise have been tried under this Chapter is committed to or transferred to the High Court and is tried by jury in the High Court; or

(3) a case is tried by jury in the High Court and the High Court grants leave to appeal on the ground that the case would, if it had

been tried outside a presidency-town, have been triable under the provisions of this Chapter.

The Provincial Government may direct the Public Prosecutor to present an appeal to the High Court from an original order of acquittal passed by the High Court in any such trial.

An appeal to the High Court consisting of more than one Judge is heard by two Judges (s. 449).

**Lunatics.**—When a Magistrate holding an inquiry or trial believes that the accused is of unsound mind and incapable of making his defence, he

- Chapter XXXIV;
- (1) inquires into the fact of such unsoundness,
  - (2) causes such person to be examined by a Civil Surgeon or a medical officer,
  - (3) examines the Civil Surgeon or medical officer as a witness, and
  - (4) reduces the examination to writing.

Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with s. 466. If he is of opinion that the accused is of unsound mind and incapable of making his defence, he records a finding to that effect and postpones further proceeding (s. 464).

If a person committed before a Court of Session or a High Court appears to be of unsound mind and incapable of making his defence, the jury or the Court with the aid of assessors try the fact of such unsoundness and incapacity, and if the jury or the Court is satisfied, the Judge records a finding to that effect and postpones further proceedings, and the jury is discharged (s. 465).

When an accused is found to be of unsound mind, the Court may release him (whether the offence is bailable or not) on sufficient security being given that he shall be taken care of and prevented from doing injury to himself or to other persons, and for his appearance before the Court when required. If the case is one in which bail should not be taken, or if sufficient security is not given, the Court orders the accused to be detained in safe custody, and reports to the Provincial Government. No order for the detention of the accused in a lunatic asylum is made otherwise than the rules made under the Indian Lunacy Act, 1912 (s. 466).

The Court may resume the inquiry or trial (s. 467) and if it considers him capable of making his defence, the inquiry or trial proceeds. If it considers him to be incapable of making his defence, it acts under s. 464, 465, or 466 (s. 468).

If the accused appears to be of sound mind at the time of inquiry or trial, but the Magistrate is satisfied from the evidence that he committed an act which would be an offence if he had been of sound mind and that he was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate proceeds with the case. If commitment to Court of Session or High Court is necessary, he may do so (s. 469).

When a person is acquitted on the ground that when he committed the offence he was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the finding states specifically whether he committed the act or not (s. 470). If the finding states that he has committed the act, which would have constituted an offence but for the incapacity found, the Court orders such person to be detained in safe custody, and reports to the Provincial Government. No order for the detention of the accused in a lunatic asylum is made otherwise than under the Lunacy Act, 1912 (s. 471).

If the Inspector-General of Prisons or any two visitors of a lunatic asylum certify that the person detained under s. 466 (either in a jail or lunatic asylum) is capable of making his defence, he is taken before the Court and dealt with under s. 468 (s. 473). If the Inspector-General or visitors certify that he may be released without danger of his doing injury to himself or other person, the Provincial Government may order him to be released or detained in custody or transferred to a public lunatic asylum (if not already sent). If it orders the accused to be transferred to an asylum, it may appoint a Commission of a judicial and two medical officers to make an inquiry into his state of mind and report to the Provincial Government which may order his release or detention (s. 474).

When any relative or friend of a person detained under s. 466 or 471 applies for his delivery, the Provincial Government may order him to be delivered after taking security that the person delivered is

- (1) properly taken care of and prevented from doing injury to himself or to any other person, and

- (2) produced for the inspection of an officer of Government at such time and place as Government directs, and

- (3) if he is detained under s. 466, he is produced when required before the Court.

If the inspecting officer certifies that such person is capable of making his defence, the Court calls upon the relative or friend to produce him before it and proceeds under s. 468 (s. 475).

#### Offences affecting administration of justice.—Offences under

Chapter XXXV. s. 195.—(1) When a civil, revenue or criminal Court is of opinion that in the interest of justice an inquiry should be made into an offence referred to in s. 195 (1) (b) or (c) which appears to have been committed in a proceeding in such Court;

- (1) it may, after preliminary inquiry, record a finding to that effect;

- (2) it may make a complaint in writing signed by the presiding officer of the Court; if the Court is a High Court, the complaint is signed by an officer appointed by it;

- (3) it forwards the complaint to a first class Magistrate (or Presidency Magistrate) having jurisdiction;

- (4) it may take sufficient security for the appearance of the accused before the Magistrate;

- (5) if the offence is non-bailable, it may send the accused in.

custody to the Magistrate;

(6) it may bind over any person to give evidence before the Magistrate. The Magistrate proceeds as if the complaint was made under s. 200. If an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may adjourn the hearing till the appeal is decided (s. 476).

The Court to which a civil, revenue or criminal Court is subordinate may complain if the subordinate Court has not (1) made a complaint under s. 476, or (2) rejected an application for the making of such complaint (s. 476A).

Any person

(1) on whose application any civil, revenue or criminal Court has refused to make a complaint under s. 476 or s. 476A, or

(2) against whom such a complaint has been made, may appeal to a superior Court, and such Court may, after notice to the parties, (i) direct the withdrawal of the complaint, or (ii) make the complaint (s. 476B).

(3) Power to commit.—When an offence under s. 195 (1) (b) or (c) is committed before any civil or revenue Court or brought under its notice in the course of a judicial proceeding and the case is triable exclusively by the High Court or Court of Session, such Court may itself complete the inquiry and commit or hold to bail the accused to take his trial before the High Court or Court of Session. It may exercise all the powers of a Magistrate (s. 478).

When such commitment is made, it sends the charge with the order of commitment and the record to the Magistrate authorized to commit for trial and he brings the case before the High Court or Court of Session (s. 479).

(4) Contempt cases.—When an offence of

(i) intentional omission to produce a document (s. 175);

(ii) refusal to take an oath (s. 178);

(iii) refusal to answer a question (s. 179);

(iv) refusal to sign a statement (s. 180);

(v) intentional insult or interruption in a judicial proceeding (s. 228);

is committed in the view or presence of a civil, criminal or revenue Court, the Court may (1) cause the offender to be detained in custody, and (2) before rising take cognizance of the offence and sentence him to fine not exceeding Rs. 200, and, in default, to simple imprisonment up to one month (s. 480).

The Court records the facts constituting the offence, the finding, and sentence. In the case of an offence under s. 228, Penal Code, the record must show,

(1) the nature and stage of the judicial proceeding in which the Court was sitting, and

(2) the nature of the interruption or insult (s. 481).

If the Court thinks (a) that the person committing any of the offences referred to in s. 480 should be imprisoned, or (b) a fine exceeding Rs. 200 should be imposed upon him, or (c) the case should not



be disposed of under s. 480, it may, (1) after recording the facts and the statement of the accused, (2) forward the case to a Magistrate having jurisdiction to try it, (3) require security for the appearance of the accused before the Magistrate, or (4) if security is not given, forward him in custody to the Magistrate (s. 482). The Court may (1) discharge the offender, or (2) remit the punishment, on his submission to its order or requisition, or on apology being made to its satisfaction (s. 484).

**Refusal to answer or produce document.**—If a witness or person called to produce a document or thing refuses (1) to answer questions put to him, or (2) to produce any document or thing in his possession or power, and does not offer any reasonable excuse for such refusal, the Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or commit him to the custody of an officer of the Court for a term not exceeding seven days, unless in the meantime he consents to answer or to produce the document or thing. If he persists in his refusal, he may be dealt with under s. 480, or s. 482, and in the case of a High Court he is guilty of a contempt (s. 485).

**Appeals from convictions.**—A person sentenced by a Court under s. 480 or 485 may appeal to the Court to which decrees or orders of such Court are appealable.

Appeal from a Presidency Small Cause Court lies to the High Court.

Appeal from a Court of Small Causes lies to the Court of Session.

Appeal from a Registrar or Sub-Registrar, if he is a Judge of a civil Court, lies to the Court to which his decrees are appealable: if he is not a Judge, then to the District Judge or to the High Court in presidency towns (s. 486).

**Jurisdiction to try offences under s. 195.**—Except as provided in ss. 480 and 485, no Judge of a criminal Court or Magistrate, other than a High Court Judge, tries any person for an offence referred to in s. 195, when it is committed before him or in contempt of his authority, or is brought under his notice in the course of a judicial proceeding (s. 487).

**Maintenance.**—If a person having sufficient means neglects or refuses to maintain his (1) wife, or (2) legitimate or illegitimate child unable to maintain itself, he may, upon proof of neglect or refusal, be ordered by a District Magistrate, Presidency Magistrate, Sub-divisional Magistrate, or first class Magistrate, to make a monthly allowance for the maintenance of his wife or child, at a rate not exceeding Rs. 100. It is payable from the date of (1) the order, or (2) application for maintenance (s. 488). The Magistrate may make alteration in the allowance if the circumstances of the person receiving it change, provided the monthly rate of Rs. 100 is not exceeded (s. 489).

**Enforcement of order.**—If the person ordered fails, without sufficient cause, to comply with the order, the Magistrate may, for every breach of the order, (1) issue a warrant for levying the amount due as if it was fine (provided the application is made within one year from the

date on which it is payable), and (2) sentence him, for any amount unpaid, to imprisonment up to one month. If he offers to maintain his wife if she lives with him, but she refuses to do so, the Magistrate may consider the grounds of refusal and, if they are just, make an order giving maintenance.

A wife is not entitled to receive an allowance from her husband and the Magistrate may cancel the order, if

(1). she lives in adultery, or

(2) she refuses to live with her husband without sufficient cause, or

(3) they are living separately by mutual consent.

All evidence is taken in the presence of the husband or father or his pleader, and is recorded as in summons-cases. If he wilfully avoids service or neglects to attend the Court, the Magistrate may hear and determine the case *ex parte*. An *ex parte* order may be set aside, for good cause, if an application is made within three months from its date.

Proceedings may be taken in the district in which the person(1) resides, or (2) is, or (3) where he last resided with his wife or the mother of the illegitimate child (s. 488).

A copy of the order of maintenance is given without payment to the person in whose favour it is made, and it may be enforced by any Magistrate in any place where the person against whom it is made may be (s. 490.)

**Chapter XXXVII. Directions of the nature of habeas corpus.—**  
Any High Court may direct that

(1) a person within the limits of its appellate criminal jurisdiction be brought before it to be dealt with according to law;

(2) a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(3) a prisoner detained in any jail, within such limits, be brought before it to be examined as a witness;

(4) a prisoner detained as above be brought before a Court-martial or any Commissioners, for trial or for examination as a witness;

(5) a prisoner within such limits be removed from one custody to another for trial;

(6) the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment (s. 491).

The High Court may exercise the above powers in the case of any European British subject at such places, outside the limits of its appellate criminal jurisdiction, as the Central Government may direct (s. 491A).

## PART IX.

### SUPPLEMENTARY PROVISIONS.

**Public Prosecutors.—**The Provincial Government may appoint a

**Chapter XXXVIII. Public Prosecutor.** Where no such officer is appointed the District Magistrate, or the Sub-divisional Magistrate, may appoint any person, not being an officer of police below

a certain rank, to be Public Prosecutor (s. 492). He may appear and plead without a written authority before any Court, and if any private person instructs a pleader, such pleader acts under his directions (s. 493).

Any Magistrate may permit the prosecution to be conducted by any person other than a police-officer below a rank prescribed by the Provincial Government. No person other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor, or other officer empowered by the Provincial Government, shall be entitled to conduct prosecution without such permission. An officer of police who has taken part in the investigation is not permitted to conduct the prosecution (s. 495).

**Withdrawal from prosecution.**—Any Public Prosecutor may with the consent of the Court—

- (1) in jury-cases before the verdict is returned, and
- (2) in other cases before the judgment is pronounced,

withdraw from the prosecution of any person either generally or in respect of any offence, and upon such withdrawal,—

(a) if it is made before a charge has been framed, the accused is discharged in respect of such offence;

(b) if it is made after a charge has been framed, or when no charge is required, he is acquitted in respect of such offence (s. 494).

**Bail.—Bailable offence.**—When a person accused of a bailable offence is arrested or detained without warrant by an officer in charge of a police-station or appears or is brought before a Court, and is prepared to give bail, he is released on bail. But such officer or Court may discharge him on his executing a bond for his appearance (s. 496).

**Chapter XXXIX.** **Non-bailable offence.**—(1) When a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may, after recording the reasons in writing, be released on bail, but he is not so released if there are reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life. But the Court may direct that (1) any person under sixteen years of age, (2) any woman, or (3) any sick or infirm person accused of such an offence be released on bail.

(2) If it appears to the officer or Court at any stage of investigation or trial that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but there are sufficient grounds for further inquiry, the accused is released on bail, after recording the reasons in writing, or on the execution of a bond for his appearance.

(3) If after the conclusion of a trial and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty, it releases the accused on the execution by him of a bond for his appearance to hear judgment (s. 497).

**Amount.**—The amount of a bond is fixed with due regard to the circumstances of the case and is not to be excessive (s. 498).

**Power of High Court or Court of Session.**—The High Court or Court of Session may, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail be reduced (s. 493).

**Bond of accused and sureties.**—Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court thinks sufficient is executed by him, and when he is released on bail, by one or more sureties conditioned that he attends at a particular time and place. The bond binds him to appear before the High Court or Court of Session (s. 499).

As soon as the bond is executed the person is released, and if he is in jail, the Court directs the jailor to release him (s. 500).

If through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they become insufficient afterwards, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, if he fails to do so, may commit him to jail (s. 501).

**Discharge.**—Any surety may apply to a Magistrate to discharge the bond, either wholly or so far as it relates to him. The Magistrate thereupon issues a warrant of arrest directing that the person so released be brought before him. On the appearance of such person, he directs the bond to be discharged wholly or so far as it relates to the applicant, and calls upon him to find other sureties, and, if he fails to do so, commits him to custody (s. 502).

**Commission for examination of witnesses.**—When it appears Chapter XL. to a Presidency Magistrate, District Magistrate, Court of Session, or the High Court, that (1) the examination of a witness is necessary for the ends of justice, but (2) his attendance cannot be procured without an amount of (i) delay, (ii) expense, or (iii) inconvenience, which would be unreasonable, the Court may (3) dispense with such attendance, and (4) issue a commission to a District or first class Magistrate, within whose jurisdiction he resides, to take his evidence. If the witness resides in an Indian State the commission may be issued to the Political Agent for such State and when the witness resides in a tribal area it may be issued to the District Magistrate of that area. Such officer may delegate his powers and duties under the commission to a subordinate officer having powers similar to a first class Magistrate in British India. Where the commission is for examination of a witness residing in an Indian State, the Political Agent shall forward it for execution to the State Court, recognised by the Crown Representative within whose jurisdiction the witness resides.

The Magistrate or officer (a) proceeds to the place where the witness is, or (b) summons the witness before him and takes down his evidence as in warrant-cases (s. 503).

If the witness is within the jurisdiction of a Presidency Magistrate, the commission may be directed to him and he may compel the attendance of and examine the witness. If the commission is issued to the Chief Presidency Magistrate, he may delegate his powers and duties

under the commission to a Presidency Magistrate (s. 504).

**Parties may examine witness.**—The parties to the proceeding in which a commission is issued may forward any interrogatories in writing which are relevant to the issue, and except where the commission is sent to a Court in an Indian State, the Magistrate or officer executing the commission examines the witness upon such interrogatories. Where the commission is sent to a Court, any such party may appear in person or by pleader and may examine, cross-examine, and re-examine the witness except in a case where the commission is sent to a Court in an Indian State (s. 505).

**Powers of subordinate Magistrates to issue commission.**—If a Magistrate other than a Presidency Magistrate or District Magistrate is of opinion that a commission for the examination of a witness ought to be issued, he applies to the District Magistrate, and the District Magistrate may either issue a commission or reject the application (s. 506).

**Return of commission.**—After any commission has been executed, it is returned, with the deposition of the witness, to the Court issuing it; and the commission, the return and the deposition are open to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party. The deposition, if it satisfies the conditions prescribed by s. 88, Evidence Act, may be received in evidence at any subsequent stage of the case before another Court (s. 507).

Where commission is issued the inquiry or trial may be adjourned till the commission is executed and returned (s. 508).

**Special rules of evidence.**—1. **Deposition of a medical witness.**—The deposition of a Civil Surgeon or medical witness, (a) taken and attested by a Magistrate in the presence of the accused, or (b) taken on commission, may be given in evidence in any inquiry or proceeding, although the deponent is not called as a witness. The Court may, if it thinks, fit, summon and examine the deponent (s. 509).

2. **Report of a Chemical Examiner.**—The report of any Chemical Examiner or Assistant Examiner to Government, upon any matter or thing submitted to him for examination or analysis, may be used as evidence in any inquiry or proceeding (s. 510).

3. **Previous conviction or acquittal.**—A previous conviction or acquittal may be proved

(1) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal took place to be a copy of the sentence or order; or

(2) in case of a conviction,

(i) by a certificate signed by the officer in charge of the jail in which the punishment was inflicted, or

(ii) by production of the warrant of commitment under which the punishment was suffered.

**Evidence as to the identity of the accused with the person convicted or acquitted is essential in every case (s. 511).**

4. **Evidence where accused has absconded.**—If an accused

has absconded, and there is no immediate prospect of arresting him, the Court competent to try or commit for trial may examine the prosecution witnesses and record their depositions. Such deposition may, on the arrest of the accused, be given in evidence against him in any trial, if the deponent is (1) dead, or (2) incapable of giving evidence, or (3) his attendance cannot be procured without an amount of delay, expense or inconvenience which would be unreasonable (s. 512).

**5.. Evidence where offender is unknown.**—If an offence punishable with death or transportation has been committed by some unknown person, the High Court may direct a first class Magistrate to hold an inquiry and examine any witnesses who can give evidence concerning the offence. Any deposition so taken may be given in evidence against any person who is accused of the offence, if the deponent is (1) dead, or (2) incapable of giving evidence, or (3) beyond the limits of British India (s. 512).

**Provisions as to bonds.**—When a person is required to execute a bond he may, except in the case of a bond for good behaviour, be permitted to deposit a sum of money in Government promissory notes to such amount as the Court or officer may fix in lieu of executing the bond (s. 513).

**Forfeiture of bond.**—When it is proved to the satisfaction of the Court that the bond has been forfeited, the Court records the grounds of such proof, and may call upon any person bound to pay the penalty thereof or to show cause why it should not be paid. If sufficient cause is not shown and the penalty is not paid, the Court may recover it by issuing a warrant for the attachment and sale of the movable property of such person or his estate if he be dead. The warrant may be executed within the jurisdiction of the Court which issued it; and it authorizes the attachment and sale of moveable property of such person outside such jurisdiction when endorsed by the District Magistrate or Chief Presidency Magistrate within whose jurisdiction the property is found. If the penalty is not paid and cannot be recovered, such person is liable to imprisonment in the civil jail for a term extending to six months.\* If a surety dies before the bond is forfeited, his estate is discharged from all liability (s. 514). If he becomes insolvent or dies, or when the bond is forfeited, the Court may order the person from whom security was demanded to furnish fresh security, and, if it is not furnished, the Court may proceed as if there had been default in complying with the original order (s. 514A). When a minor is required to execute a bond, the Court may accept, in lieu thereof, a bond executed by a surety or sureties (s. 514B).

Orders passed by a Magistrate (other than a Presidency Magistrate or District Magistrate) are appealable to the District Magistrate. He may also revise them (s. 515).

The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear before such Court (s. 516).

**Disposal of property.**—**Custody and disposal of property pending trial.**—When any property (a) regarding which an offence appears to have been committed,

or (b) which appears to have been used for the commission of any offence, is produced before a criminal Court, the Court may make order for its custody, pending the conclusion of the inquiry or trial, and if it is subject to speedy or natural decay, may order it to be sold or disposed of (s. 516A). After the conclusion of the inquiry or trial, the Court may make an order for the disposal by destruction, confiscation, or delivery to any person of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence. The order is not, except where the property is live stock or subject to speedy and natural decay, carried out for one month, or if an appeal is presented, till it has been disposed of. The Court may deliver the property to any person claiming possession on his executing a bond to restore the property to the Court if the order is modified or set aside on appeal. (s. 517). The Court may direct the property to be delivered to the District Magistrate or Sub-divisional Magistrate who deals with it as if it had been seized by the police (s. 518).

**Payment to an innocent purchaser.**—When a person is convicted of theft or receiving stolen property, and any other person has bought the stolen property from him without knowing that it was stolen, and any money has on his arrest been taken out of the possession of the convicted person, the Court may order that out of such money a sum not exceeding the price paid by the purchaser be delivered to him (s. 519).

**Destruction of objectionable matter.**—The Court may order the destruction of (1) all copies of the thing in respect of which conviction is made under ss. 292, 293, 501, and 502, Penal Code, or (2) food, drink, or drug in respect of which conviction is made under s. 272, 273, 274, or 275, Penal Code (s. 521).

**Restoration of possession of immovable property.**—When a person is convicted of an offence attended by criminal force or criminal intimidation, and any person has been dispossessed of immoveable property by such criminal force or criminal intimidation, the Court may, within one month from the date of the conviction, order the person dispossessed to be restored to possession. Such order does not prejudice any right or interest to or in such immoveable property which a person may establish in a civil suit. The order may be made by a Court of appeal, confirmation, reference, or revision (s. 522).

**Seizure of property by police.**—Seizure by a police-officer of property (a) taken under s. 51, or (b) suspected to have been stolen, or (c) found under suspicious circumstances, is reported to a Magistrate who orders (a) its disposal, or (b) its delivery to the person entitled, or (c) respecting its safe custody and production. If the person entitled is known, the Magistrate may order the property to be delivered to him on such conditions as the Magistrate thinks fit. If he is unknown, the Magistrate detains it and issues a proclamation specifying the articles and requiring any person having a claim thereto, to appear before him and establish his claim within six months (s. 523). If no person establishes his claim within six months, and if the person in whose possession

such property was found is unable to show that it was legally acquired by him the property remains at the disposal of Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or first class Magistrate specially empowered (s. 524). The Magistrate may direct it to be sold if—

- (1) the person entitled to possession is unknown or absent ;
- (2) the property is subject to speedy and natural decay ; or
- (3) its sale would be for the benefit of the owner ; or
- (4) its value is less than Rs. 10 (s. 525).

**Transfer of criminal cases.**—Whenever it appears to the High Court (1) on the report of the lower Court, or (2) Chapter XLIV. on the application of a party interested, or (3) on its own initiative that

(a) a fair and impartial inquiry or trial cannot be had in any criminal Court, or

(b) some question of law of unusual difficulty is likely to arise, or

(c) a view of the place in or near which any offence has been committed may be required for satisfactory inquiry or trial, or

(d) an order under this section will tend to the general convenience of the parties or witnesses, or

(e) such an order is expedient for the ends of justice, or is required by any provision of this Code ;

it may order that—

(i) any offence be inquired into or tried by any Court not empowered under ss. 177 to 184, but in other respects competent to inquire into or try such offence ;

(ii) any particular case or appeal be transferred from a criminal Court to any other criminal Court of equal or superior jurisdiction ;

(iii) any particular case or appeal be transferred to and tried before itself ; or

(iv) an accused person be committed for trial to itself or to a Court of Session.

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it observes, except as provided in s. 207, the same procedure which that Court would have observed if the case had not been so withdrawn.

The application to the High Court for the exercise of this power is made by motion, which is, except when the applicant is the Advocate General, supported by affidavit or affirmation.

When an accused makes an application, the High Court may direct him to execute a bond, conditioned that he will, if so ordered, pay any amount by way of costs to the person opposing the application. He must give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made ; and no order is made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Where the application is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the appli-



cant to pay by way of costs to any person who has opposed the application any expenses reasonably incurred by him.

If, in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court his intention to make an application of transfer, the Court adjourns the case or postpones the appeal for a reasonable time for the application to be made and an order to be obtained thereon. But a Court of Session is not required to adjourn a trial if it is of opinion that the applicant has had a reasonable opportunity of making it and has failed without sufficient cause to take advantage of it (s. 526).

**Transfer of military cases.**—Where a person subject to the Naval Discipline Act, or the Army Act, or the Air Force Act, is accused of an offence under s. 41, proviso (a), of the Army Act, the Advocate General, if instructed by competent authority, applies to the High Court for the committal or transfer of the case to the High Court, and the High Court passes such orders and tries the case by jury (s. 526A).

**Power of Provincial Government as regards transfer.**—The Provincial Government may, by notification, direct the transfer of a case or appeal:—

- (1) from one High Court to another, or
- (2) from a criminal Court subordinate to a High Court, to another criminal Court of equal or superior jurisdiction subordinate to another High Court

when such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses. [Provided that no case or appeal shall be transferred to a High Court or other Court in another Province without the consent of the Provincial Government of the Province]. The Court to which such case or appeal is transferred deals with it as if it has been originally instituted in, or presented to, such Court (s. 527).

**Power of Sessions Judge and Magistrates.**—A Sessions Judge may withdraw a case from, or recall a case which he has made over to, any Assistant Sessions Judge.

A Chief Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate may withdraw a case from, or recall a case which he has made over to, a Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other competent Magistrate.

The Provincial Government may authorize the District Magistrate to withdraw from a subordinate Magistrate any class of cases.

Any Magistrate may, after recording his reasons, recall a case made over by him, under s. 192, sub-section (2), to any other Magistrate, and try it himself (s. 528).

**Supplementary provisions relating to European and Indian British subjects.**—Where, in a case in which the above provisions do not apply, any person claims to be dealt with as an European or an Indian British subject, or where

any person claims to be dealt with as an European or an American, he must state the grounds of such claim to a Magistrate who inquires into the truth of such statement and allows him a reasonable time within which to prove it, and then decides whether he is or is not an European British subject or an Indian British subject, or an European or an American. When such claim is rejected by the Magistrate and the person is committed for trial before the Court of Session, and he repeats the claim, the Court after further inquiry decides the claim. When the Court rejects the claim, the decision forms a ground of appeal from the sentence or order passed (s. 528A).

If such person (1) does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed; or (2) if such claim is rejected by the committing Magistrate, and is not repeated before the Court to which he is committed,

he is held to have relinquished such right and cannot assert it in any subsequent stage of the case (s. 528B).

If a person, not being an European British subject, is dealt with as an European British subject, or, not being an Indian British subject, is dealt with as an Indian British subject, or, not being an European or an American, is dealt with as an European or an American, and he does not object, the inquiry, commitment, trial, or sentence is not invalid (s. 528C).

**Irregular proceedings.—Irregularities which do not vitiate proceedings.—**If a Magistrate not empowered to

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do any of the following things, erroneously in good faith does it, his proceedings are not set aside :—

- (1) issues a search-warrant under s. 98 ;
- (2) orders, under s. 155, the police to investigate an offence ;
- (3) holds an inquest under s. 176 ;
- (4) issues process, under s. 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;
- (5) takes cognizance of an offence under s. 190, sub-section (1), clause (a) or clause (b) ;
- (6) transfers a case under s. 192 ;
- (7) tenders a pardon under s. 397 or s. 398 ;
- (8) sells property under s. 524 or s. 525 ; or
- (9) withdraws a case and tries it himself under s. 528 (s. 529).

**Irregularities which vitiate proceedings.—**If a Magistrate, not being empowered, does any of the following things, his proceedings are void :—

- (1) attaches and sells property under s. 88 ;
- (2) issues a search-warrant for a letter, parcel or other thing in the Post Office, or a telegraph in the Telegraph Department ;
- (3) demands security to keep the peace ;
- (4) demands security for good behaviour ;
- (5) discharges a person lawfully bound to be of good behaviour ;
- (6) cancels a bond to keep the peace ;
- (7) makes an order under s. 188 as to a local nuisance ;

- (8) prohibits, under s. 148, the repetition or continuance of a public nuisance ;
- (9) issues an order under s. 144 ;
- (10) makes an order under Chapter XII ;
- (11) takes cognizance, under s. 190, sub-section (1), clause (c), of an offence ;
- (12) passes a sentence, under s. 349, on proceedings recorded by another Magistrate ;
- (13) calls, under s. 435, for proceedings ;
- (14) makes an order for maintenance ;
- (15) revises, under s. 515, an order passed under s. 514 ;
- (16) tries an offender ;
- (17) tries an offender summarily ; or
- (18) decides an appeal (s. 530).

**Proceedings in wrong Court.**—Proceedings of a criminal Court are not set aside merely on the ground that they took place in a wrong place, unless such error has occasioned a failure of justice (s. 531).

**Irregular commitments.**—If a Magistrate purporting to exercise powers, which are not so conferred, commits an accused for trial before a Court of Session or High Court, such Court may accept the commitment if it considers that the accused has not been injured thereby, unless before commitment objection was made on behalf of the accused or prosecution to the jurisdiction of the Magistrate. If it considers that the accused was injured, or objection was made, it quashes the commitment and directs fresh inquiry by a competent Magistrate (s. 532).

**Non-compliance with the provisions of s. 164 or 364.**—If any Court, before which a confession or other statement of an accused is tendered in evidence, finds that any provisions of these sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement ; and, notwithstanding s. 91 of the Evidence Act, such statement is admitted if the error has not injured the accused as to his defence on the merits. This section applies to Courts of appeal, reference and revision (s. 533).

**Omission to give information.**—An omission to inform under s. 447 any person of his rights under Chapter XXXIII does not affect the validity of any proceeding (s. 534).

**Omission to frame charge.**—No finding or sentence is invalid merely on the ground that no charge was framed, unless in the opinion of the Court of appeal or revision, a failure of justice has been occasioned. If there is a failure of justice, the Court orders that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge (s. 535).

**Wrong trial by jury or assessors.**—If an offence triable with the aid of assessors is tried by a jury, the trial is not invalid on that ground. Similarly, if an offence triable by jury is tried with the aid of assessors, the trial is not invalid, unless objection is taken before the Court records its finding (s. 536).

**Finding or sentence when error or omission in charge.**—No finding, sentence or order passed by a competent Court is reversed or altered under Chapter XXVII or on appeal or revision on account of

(1) any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, judgment, etc. ; or

(2) the omission to revise any list of jurors or assessors ; or

(3) any misdirection in any charge to the jury ;

unless such error, omission, or irregularity has occasioned a failure of justice. In determining this the Court sees whether the objection could and should have been raised at an earlier stage in the proceedings (s. 537).

**Distress.**—No attachment is unlawful, and any person making it is not a trespasser on account of any defect or want of form in the summons, conviction, writ or attachment or other proceedings (s. 538).

**Miscellaneous.—Affidavits.**—Affidavits and affirmations to be used before High Court may be sworn before (1) the Clerk of the Crown or Commissioner ; (2) Judge or Commissioner for taking oaths in any Court of Record in British India ; (3) Commissioner to administer oaths in England or Ireland or any Magistrate authorized to take affidavits in Scotland (s. 539).

When allegations are made against a public servant in any application to the Court, the applicant may support it by affidavit, and the Court may order evidence to be given relating to the facts stated therein. The Court may order scandalous and irrelevant matter to be struck out (s. 539A).

**Local inspection.**—A Judge or Magistrate may, after notice to the parties, visit and inspect any place in which an offence is committed, or any place which it is necessary to view for appreciating the evidence given.

He must without delay record a memorandum of any relevant facts observed at such inspection. Such memorandum forms part of the record, and its copy is furnished free of cost to the Public Prosecutor, complainant, or the accused if he desires.

Where the trial is by jury or with the aid of assessors, the Judge does not make inspection unless with jurors or assessors (s. 539B).

**Power to examine witness.**—Any Court may summon any person as a witness, or examine any person in attendance, or recall and re-examine any person if his evidence appears to it essential to the just decision of the case (s. 540).

**Illness of some of the accused.**—Where there are more accused than one, and one or more of them is or are incapable of remaining before the Court, the Judge or Magistrate may, if such accused is represented by a pleader, dispense with his attendance and proceed with the trial, and may at any subsequent stage direct his personal attendance. If the accused is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, after recording reasons, either adjourn such trial or order that such accused be tried separately (s. 540A).

**Removal to jail.**—The Provincial Government has power to direct

in what place a person is to be kept in imprisonment or custody. If a person liable to be imprisoned or committed to custody is in confinement in a civil jail, the Court ordering the imprisonment or committal may direct that he be removed to a criminal jail. After his release from the criminal jail he is sent back to the civil jail unless—

(i) three years have elapsed since he was removed to the criminal jail, in which case he is deemed to have been discharged from the civil jail; or

(ii) the Court which ordered his imprisonment in the civil jail has certified to the jailor that he is entitled to be discharged (s. 541).

**Prisoner as a witness.**—A Presidency Magistrate, desiring to examine any person confined in a jail within his jurisdiction, may order the jailor to bring him in custody (s. 542).

**Expenses of a complainant or witness.**—A Court may order payment, on the part of Government, of the expenses of a complainant or witness (s. 544).

**Expense or compensation out of fine.**—When a Court imposes a fine or confirms such sentence or a sentence of which fine forms a part, it may when passing judgment order the whole or any part of the fine to be applied—

(1) in defraying expenses properly incurred in the prosecution;

(2) in payment of compensation for any loss or injury caused by the offence, when compensation is recoverable in a civil suit;

(3) when a person is convicted of theft, criminal misappropriation, criminal breach of trust, or cheating, or having dishonestly received or retained, or having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss if such property is restored to the person entitled thereto.

No such payment is made, in a case subject to appeal, until the period of appeal has elapsed, or if an appeal is presented, till it is decided (s. 545).

At the time of awarding compensation in a subsequent civil suit relating to the same matter, the Court takes into account any sum paid as compensation by a criminal Court (s. 546).

**Recoupment of fees in non-cognizable cases.**—In any complaint of a non-cognizable offence, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant—

(1) the fee paid on the petition of complaint, or for the examination of the complainant, and

(2) any fees paid by the complainant for serving processes on his witnesses or on the accused.

In default of payment, simple imprisonment is inflicted up to thirty days.

An appellate Court or High Court may make an order under this section in revision (s. 546A).

**Recovery of money.**—Any money (other than a fine) is recoverable as fine (s. 547).

**Delivery of persons liable to be tried by a Court-martial.**—The Central Government may make rules as to cases in which persons subject to military, naval or air force law are to be tried under this Code or by a Court-martial. When a person is brought before a Magistrate and charged with an offence for which he is liable to be tried by a Court-martial under the Army Act, the Naval Discipline Act or Air Force Act, the Magistrate delivers him together with a statement of the offence of which he is accused to the commanding officer of the regiment or corps, ship or detachment to which he belongs, or to the commanding officer of the nearest station for the purpose of being tried by a Court-martial. On receiving an application from a commanding officer to apprehend such person, the Magistrate apprehends him (s. 549).

**Seizure of suspicious stolen property.**—Any police-officer may seize any property (1) suspected to have been stolen, or (2) found under circumstances which create suspicion of the commission of any offence. If he is subordinate to the officer in charge of a police-station, he reports the seizure to that officer (s. 550).

**Powers of superior police officers.**—Officers superior in rank to an officer in charge of a police-station exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station (s. 551).

**Restoration of abducted females.**—Upon complaint on oath made to a Presidency Magistrate or District Magistrate of the abduction or unlawful detention of a woman or a female child under sixteen years for unlawful purpose, he may make an order for the immediate restoration of the woman to her liberty or of the child to her husband, parent or guardian or other person, and use force to compel compliance with such order (s. 552).

**Compensation to persons arrested.**—When a person causes a police-officer to arrest another in a presidency-town, and the Magistrate thinks that there was no sufficient ground for causing the arrest, he may award compensation, not exceeding Rs. 50, to be paid by such person to the person arrested for his loss of time and expenses. If more persons than one are arrested, the Magistrate may award such compensation to each of them. The compensation may be recovered as fine, and if it is not recovered, the defaulter is sentenced to simple imprisonment up to thirty days (s. 553).

**Personal interest of a Judge or Magistrate.**—A Judge or Magistrate cannot—

- (1) try or commit for trial any case
    - (i) to which he is a party, or
    - (ii) in which he is personally interested,
 except with the permission of the Court to which an appeal lies;
  - (2) hear an appeal from any judgment or order passed by him.
- A Judge or Magistrate is not deemed a party to, or personally interested in, any case by reason only that—

- (1) he is a Municipal Commissioner, or
- (2) concerned otherwise in a public capacity, or
- (3) he has viewed the place in which

(i) an offence is alleged to have been committed, or  
 (ii) any other transaction material to the case is alleged to have occurred,  
 and made an inquiry in connection with the case (s. 556).

**Practising pleader cannot be a Magistrate.**—A pleader practising in the Court of a Magistrate cannot sit as a Magistrate in such Court or in a Court within its jurisdiction (s. 557).

**Court language.**—The Provincial Government determines the language of each Court within its territories other than the High Court (s. 558).

**Exercise of powers by successors.**—The powers and duties of a Judge or Magistrate may be exercised by his successor. If there is any doubt as to who the successor is, the Chief Presidency Magistrate or the District Magistrate determines it: in the case of an Additional or Assistant Sessions Judge, the Sessions Judge determines it (s. 559).

**Purchase of property by a public servant.**—A public servant who is concerned in the sale of any property cannot purchase or bid for it (s. 560).

**Rape by a husband.**—A Chief Presidency Magistrate or a District Magistrate—

(1) takes cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(2) commits the man for trial of the offence.

If it is necessary to investigate the matter, a police-officer of a rank below that of police-inspector is not to be employed (s. 561).

**Inherent powers of the High Court.**—The inherent powers of the High Court.

(1) to make such orders as may be necessary to give effect to any order, or

(2) to prevent abuse of the process of any Court, or

(3) to secure the ends of justice,

are not limited or affected by this Code (s. 561A).

**First offenders.**—Release of offenders on probation of good conduct.—When

(1) a person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or

(2) a person under twenty-one years of age, or a woman, is convicted of an offence not punishable with death or transportation for life, and no previous conviction is proved,

the Court may, having regard to the age, character or antecedents of the offender,

instead of sentencing him,

direct that he be released on entering into a bond, with or without sureties, to appear and receive sentence when called upon within three years, and in the meantime to keep the peace and be of good behaviour.

When such person is convicted by a third class or second class Magistrate not specially empowered, the Magistrate, if he is of opinion that the above provision should apply, must record his opinion and

submit the proceedings to a first class Magistrate or sub-divisional Magistrate and forward the accused to, or take bail for his appearance before, such Magistrate (s. 562).

**Release with admonition.**—When a person is convicted of (1) theft, (2) theft in a building, (3) misappropriation, (4) cheating, or (5) any offence under the Penal Code punishable with imprisonment up to two years,

and no previous conviction is proved against him,

the Court may, having regard to the age, character, antecedents, physical or mental condition of the offender, or trivial nature of the offence or any other extenuating circumstances,

instead of sentencing him to any punishment,  
release him after admonition.

An order releasing an offender (a) on probation of good conduct, or (b) with admonition, may be made by an appellate Court or High Court in revision. The High Court may on appeal or in revision set aside such an order passed by a subordinate Court and in lieu thereof pass sentence which might have been inflicted by the Court which convicted the offender (s. 562).

The Court before directing the release of the offender must be satisfied that he or his surety has a fixed place of abode or regular occupation in the place (a) for which the Court acts, or (b) in which the offender is likely to live during the period named for the observance of the conditions (s. 564).

If the Court which (a) convicted the offender, or (b) could have dealt with him in respect of his sentence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension and may remand him in custody or admit him to bail conditioned on his appearing for sentence. It may, after hearing the case, pass sentence (s. 563).

**Previously convicted offenders.**—When a person having been convicted

(I) by a Court in British India of—

(1) taking gift to recover property of which a person has been deprived (s. 215, I. P. C.),

(2) counterfeiting currency-notes or bank-notes (s. 489A, I. P. C.).

(3) using as genuine forged or counterfeit currency-notes or bank-notes (s. 489B, I. P. C.).

(4) possession of forged or counterfeit currency-notes or bank-notes (s. 489C, I. P. C.),

(5) making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes (s. 489D, I. P. C.),

(6) an offence punishable under Chapter XII (Coin and Government Stamps) or Chapter XVII (Property) of the Penal Code with imprisonment for three years or upwards, or

(II) by a Court in an Indian State, acting under the authority of the Central Government or of the Crown Representative of any of the above offences,

is again convicted of any such offence punishable with imprison-



ment for three years or upwards by a High Court, Court of Session, Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or first class Magistrate,

such Court or Magistrate may, at the time of passing sentence of transportation or imprisonment, order,

that this residence, and any change of, or absence from, such residence, after release, be notified for a term not exceeding five years from the expiration of the sentence.

If the conviction is set aside on appeal, the order becomes void. Such order may be made by an appellate Court or High Court in revision.

The Provincial Government may make rules relating to residence of released convicts. Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated (s. 565).

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## APPENDIX.

*Questions selected from those set at various law-examinations.*

### CHAPTER I.

1. Give a short history of the origin and development of the law of procedure in respect of criminal cases in British India. Is it correct to say that the Criminal Procedure Code is purely adjective law? See comment on s. 1.
2. Define "complaint." What action should a Magistrate take on taking cognizance of a case on complaint? See ss. 4 (1) (h) and 200.
3. Distinguish between trial, inquiry and investigation. See s. 4 (k), (l).
4. What is the distinction between a summons-case and a warrant-case? See s. 4 (v), (w).

### CHAPTER II.

5. Give shortly the classes of criminal Courts in British India under the Code of Criminal Procedure. See s. 6.
6. What do you understand by a District Magistrate? What are his powers and within what area can he exercise his jurisdiction? See ss. 10, 95, 96, 108, 124, 125, 260, 337, 406, 407, 435.
7. Mention any five powers of a District Magistrate. See above question.
8. State five ordinary powers of a First Class Magistrate. See ss. 98, 100, 107, 109, 126, 133, 145, 146, 147, 164, 167, 174, 206, 337, 438, 439, 503, 562, and 565.
9. Name any five powers of the Chief Presidency Magistrate. See ss. 95, 96, 108, 124, 125, 144, 192, 561.
10. What is the nature of the power of control which a District Magistrate has over his subordinate Magistrates? See ss. 12, 13, 15.
11. Can any police-officer be invested with magisterial powers? If so, under what circumstances and to what extent? See s. 14.
12. What power of control have Sessions Judges over subordinate Courts? See s. 17 (3), (4).
13. How are Benches of Magistrates constituted and what powers may be conferred on such Benches? See ss. 19, 21, 261, 263, 264, 265.

### CHAPTER III.

14. Can a second or third class Magistrate try a European British subject who claims to be tried as such? What sentence can a Court of Session in the mofussil pass upon European British subjects? See ss. 29A, 34A.
15. What provisions are there in the Code relating to juvenile offenders? See ss. 39B and 399.
16. How many grades of Courts are there and what is the extent of the sentence which may be passed by each grade? See ss. 31, 32, 34 and 34A.
17. What sentence can a Sessions Court pass upon a European British subject? See s. 34A.
18. State the rule as to sentence in cases of conviction of several offences at one trial. See s. 35.

### CHAPTER IV.

19. Is a private person bound to assist a police-officer in the execution of his duties? If so, when? See s. 42.
20. What duties are laid upon the public generally as to the prevention of offences and the bringing of offenders to justice? See s. 44.

21. What are the duties laid down on village officers or landowners or occupiers of land to report certain matters? See s. 45.

#### CHAPTER V.

22. Describe the procedure to be followed before, in and after execution of a warrant of arrest. See ss. 46-53.

23. When can a police-officer arrest a person without an order from a Magistrate and without a warrant? Does the Court make any distinction between police-officers of different ranks in this respect? See s. 54.

24. Enumerate the provisions made for the safeguarding of vagabonds and habitual offenders. See ss. 55, 109, 110.

25. How long can the police keep an offender in custody (1) by their own power and (2) with the order of a Magistrate? See ss. 57, 61, 167, 344.

26. When is a private person empowered to arrest a person? See s. 59.

27. State what such person is required to do after making the arrest. See s. 59.

28. How long may a person arrested without a warrant be kept in custody? See s. 61.

29. What are the powers of police-officers, Magistrates, and Courts with regard to admitting accused persons to bail? See ss. 63, 496-502.

#### CHAPTER VI.

30. State briefly the various steps that may be taken to compel an accused person to appear before a criminal Court. See ss. 68, 75, 87.

31. What is the procedure when service of summons has to be effected on a Government servant or a railway employee? See s. 72.

32. Describe the procedure prescribed for the issue and service of a warrant of arrest. See s. 75, *et seq.*

33. In what form must a warrant of arrest be issued, and how long does such a warrant remain in force? See ss. 75-83.

34. Is the execution of a warrant of arrest by a police-officer other than the one to whom it is endorsed legal? See s. 77.

35. What is the procedure in executing a warrant of arrest outside the jurisdiction of the Court issuing the same? See ss. 83, 84.

36. Define "proclaimed offender." What steps can a Court take when it has reason to believe that a person against whom a warrant has been issued has absconded? See s. 87, *et seq.*

37. When may a Court order attachment of property of a person who has absconded? See s. 88.

38. Under what circumstances can a Magistrate or Court order a sale of the property? See ss. 88, 386, 514, 524, 525.

39. When can a Court issue a warrant in cases in which it is empowered to issue a summons? See s. 90.

#### CHAPTER VII.

40. Under what circumstances can a criminal Court issue a search warrant? See s. 96.

41. What is the procedure to be adopted in the execution of that search warrant? See ss. 96-99G.

42. State the provisions laid down in the Code of Criminal Procedure relating to search for a person confined under such circumstances that the confinement amounts to an offence. See s. 100.

#### CHAPTER VIII.

43. Give a concise and systematic idea of proceedings directly dealing with prevention of offences under the Code of Criminal Procedure. See Chapter VIII.

44. What are the provisions of the Criminal Procedure Code relating to prevention of offences and what powers have been vested in the Police and the Magistrates for that purpose? See ss. 106, 107, 108-110.

45. Summarise the provisions of the Criminal Procedure Code with regard to security for keeping the peace. See ss. 106, 107.

46. Under what circumstances can a Court while convicting an accused order him to furnish security to keep the peace? See s. 106.

47. Enumerate the essential points of difference between ss. 106 and 107. See ss. 106, 107.

48. In what cases can security for good behaviour be demanded? See ss. 106, 109, 110.

49. What circumstances would justify a Magistrate to require a person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour? See s. 107.

50. What is the nature of the evidence which would justify a Magistrate to demand a bond with sureties for maintaining good behaviour? See ss. 107, 112, 117, 118.

51. What powers has a Magistrate to take security for good behaviour from a habitual offender? See s. 110.

52. Describe shortly the procedure to be followed in a proceeding for taking security for good behaviour. See ss. 112-119.

53. Under what circumstances may a Magistrate dispense with the personal appearance of an accused person? See ss. 116, 205.

#### CHAPTER IX.

54. Under what circumstances can an assembly be ordered to disperse on command of Magistrate or police officer? See s. 127.

55. What is the extent to which civil or military force can be employed to disperse unlawful assemblies? See ss. 128, 129.

#### CHAPTER X.

56. Under what circumstances can a Magistrate take action for the removal of a public nuisance and what Magistrates are competent to take such action? See s. 138.

57. Describe shortly the procedure of a criminal Court for the removal of public nuisances which are not of an urgent character. See ss. 134-138.

58. Summarise the provisions of the Criminal Procedure Code regarding the removal of a public nuisance. See ss. 134-138.

59. What procedure should a Magistrate adopt when a person served with a conditional order for removal of a public nuisance denies the existence of a public right? See s. 139A.

60. When can a Magistrate pass an order absolute after a conditional order is served upon a party for removal of a nuisance? See s. 140.

61. Discuss the procedure to be followed from the date of the order on accused against whom a conditional order for the removal of a nuisance has been made by a Magistrate. See ss. 137, 138, 139, 139A, 140, 141.

#### CHAPTER XI.

62. Give a short account of the provisions of the law empowering criminal Courts either to make temporary orders in urgent cases of nuisance or apprehended danger. See s. 144.

#### CHAPTER XII.

63. Briefly discuss the provisions of the law dealing with prevention of offences relating to disputes as to immoveable property. See s. 145.

64. Describe the procedure to be adopted under the Criminal Procedure Code in case of a dispute concerning any land or water or the boundaries thereof likely to cause a breach of the peace. See s. 147.

### CHAPTER XIII.

65. What are the provisions relating to preventive action of the police? See ss. 149-153.

### CHAPTER XIV.

66. How should an officer in charge of a police station act when he receives information of the commission of a non-cognizable offence? Can he under any circumstances investigate such an offence? See ss. 155 and 156.

67. What are the duties and powers of a police-officer in charge of a police station conducting an investigation upon a complaint of a cognizable offence? See ss. 157-162.

68. Under what circumstances, if any, can a statement made by a person to a police-officer be reduced to writing and used as evidence against an accused person? Who may record a statement or confession made to him in the course of an investigation, and what are the requirements of the law with respect to the recording of confessions? See ss. 161, 162, 164.

69. What questions is a witness justified in refusing to answer when put to him by a police-officer? See s. 161.

70. When can a Magistrate direct a local investigation by the police in the case of a complaint made before him of an offence of which he has cognizance? See s. 161.

71. What is the proposition of law with regard to the admissibility of statements made to the police-officers in the course of an investigation under the Code? See s. 162.

72. Are the statements made by the witnesses or accused person to an investigating police officer and recorded by him, admissible in evidence at the trial; and if so, for what purposes? See s. 162.

73. How is the record of the examination of an accused person kept? Is any and what "certificate" necessary to be recorded by the Magistrate? Is absence of the certificate fatal to the admission of the statement, as evidence against the accused? Can it be remedied? If so, how? See ss. 164, 364, 533.

74. When can an officer in charge of a police station require another to issue search warrant? See s. 166.

75. State fully the conditions which must be fulfilled by a Magistrate in recording a confession in order to render it admissible in evidence. See s. 164.

76. What formalities must a Magistrate observe in recording a confession? See s. 164.

77. What is an investigation diary? How may a Magistrate use it? What use can be made of police diaries of a case under inquiry? See s. 172.

78. What is a charge sheet? When is it to be drawn up? See s. 173.

79. In what cases are inquests held and by whom? See s. 176.

### CHAPTER XV.

80. State the rules laid down in the Code of Criminal Procedure for the purpose of determining the place of inquiry or trial of an accused person. See ss. 177-189.

81. What are the provisions of the Criminal Procedure Code relating to the place of inquiry into, or trial of, an alleged offence of criminal misappropriation, criminal breach of trust, stealing, kidnapping and abduction? See s. 181 (2), (3), (4).

82. At what different places may the offences of dacoity with murder or escape from custody be tried? See s. 181 (1).

83. Where can an offender be tried when the offence is committed by him in the course of performing a journey or voyage? See s. 183.

84. What offences may be tried in a presidency-town irrespective of the fact of the commission thereof within such town or not? See s. 184.

85. What offence can a Court inquire into by reason merely of the presence of the offender within the local limits of its jurisdiction? See ss. 186, 188.

86. Under what circumstances can an offence committed outside British India be tried as an offence in British India? See s. 188.

87. What are the ways by which a Magistrate may take cognizance of an offence? See s. 190.

88. Can a Magistrate take cognizance of an offence upon private information? If he does so, what are the rights of the accused? See s. 190(1) (c).

89. Can a Magistrate always try a case of which he has taken cognizance? See s. 190 (8).

90. What are the conditions requisite for the initiation of criminal proceedings? See ss. 190-199A.

91. Of what offences and in what way, can a Sessions Judge or the High Court take cognizance? See ss. 198, 194.

92. What difference is there between the powers of a Sessions Judge and those of an Assistant Sessions Judge in the matter of taking cognizance of offences and trials of offenders? See s. 193.

93. State (a) the nature and class of offences for which complaints cannot be filed without a previous sanction being obtained; and also (b) the nature and class of offences for which complaints can be filed by particular persons only. See ss. 195, 196, 197, 198, 199.

94. A witness gives false evidence in a Court of Justice. Indicate the steps that should be taken to bring him to trial. See s. 195.

95. What are the restrictions imposed upon a Court in the matter of taking cognizance of an offence of criminal conspiracy? See s. 196A.

## CHAPTER XVI.

96. When is a Magistrate taking cognizance of a case not deemed to be required to examine the complainant? See s. 200 (aa).

97. What is the procedure a Magistrate should adopt on receiving a complaint? See ss. 200-203.

98. When is a Magistrate of the first or second class having power to take cognizance of an offence empowered to direct an inquiry or investigation previous to the issue of process for compelling the attendance of the person complained against? See s. 202 (1).

## CHAPTER XVIII.

99. How is a criminal proceeding before a Magistrate initiated? See s. 200.

100. When may a Magistrate dismiss a complaint? See s. 203.

101. When may a Magistrate commit an accused person for trial by the Court of Session? See s. 206.

102. What Magistrates may commit a person for trial to the Court of Session or to the High Court? See s. 206.

103. Briefly describe the procedure to be adopted by a Magistrate in an inquiry into cases triable by the Court of Session or High Court. See ss. 207-220.

104. State the steps which the accused should take to summon his witnesses at his trial before the Court of Session. See ss. 211, 212.

105. At what stage of the proceedings should a charge be framed by the Magistrate in cases triable by the Court of Session or High Court? See s. 214.

106. On what grounds and by which Court can the commitment of an accused person to the Court of Session be quashed? See s. 215.

## CHAPTER XIX.

107. Discuss shortly the law as to framing of charges in a criminal trial. See c. xix.

108. What do you mean by the framing of a charge at a criminal trial, and what is its scope and object? To what extent does the law tolerate a defective charge? See ss. 221 and 225.

109. What particulars should it contain? See s. 222.

110. Is a defective charge necessarily fatal to a conviction? See s. 225.

111. What power, if any, has a criminal Court to alter or add to a charge against an accused person? See ss. 226, 227.

112. What is the effect of error or omission in a charge? See s. 232.

113. State and illustrate how far an omission to frame a charge or an error in stating the particulars required to be stated in the charge vitiates a criminal trial? See s. 232.

114. What do you understand by "joinder of charges"? Summarise the provisions of the Criminal Procedure Code as to joinder of charges. See ss. 233-236.

115. Is it necessary to draw up a charge in respect of every offence punishable under the Indian Penal Code? If not, when does the law dispense with it? See ss. 233-240.

116. Under what circumstances does the law permit a joinder of charges? What is the general rule in this behalf? See ss. 233-240.

117. "For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately." State the exceptions to this rule. See ss. 234, 235, 236, and 239.

118. Who can be charged jointly, and on how many charges can a person be tried at one trial? See s. 234.

119. When may different offences be charged together? Is there any limit to their number? If so, when? See s. 234.

120. When can a person be tried in one and the same trial for more than one offence? See ss. 234, 235.

121. If an accused is tried for and convicted of several charges of more than three offences of the same kind and extending over more than one year, is this an irregularity which can be remedied by s. 537 of the Cr. P. C.? See ss. 234, 537.

122. Discuss shortly, with reference to leading cases, the principles governing the joint trial of a number of persons accused of different offences which are alleged to have been committed "in the same transaction." See s. 235.

123. When can a person charged with one offence be convicted of another? See s. 237.

124. What persons may be jointly charged and tried in a criminal trial? See s. 239.

## CHAPTER XX.

125. Briefly describe the procedure relating to the trial of summons-cases. See ss. 241-249.

126. What are the principal points of difference in the procedure to be followed by a Magistrate in trying summons-cases and warrant-cases respectively? See ss. 241, 249 and 251-259.

127. What are the possible consequences of non-appearance of the complainant in a summons-case? See s. 247.

128. A warrant and a summons-case are dismissed for default. What procedure should the complainant in each case adopt to revive them? See ss. 247, 259.

129. Distinguish between "withdrawal" and "compounding" of a case. See ss. 248, 245.

130. State the nature of the summary procedure a Magistrate can adopt when he finds the complainant's case to be frivolous and vexatious. See s. 250.

## CHAPTER XXI.

181. Sketch shortly the course of trial of a warrant-case from initiation of proceedings to acquittal or conviction. See ss. 251-259.

182. What is the distinction between "discharge" and "acquittal" in a warrant-case? See ss. 253, 258.

183. Point out the essential difference in the procedure of a summons and a warrant-case. See summary.

184. State the procedure laid down by the Criminal Procedure Code in the case of frivolous accusations in summons and warrant-cases. See s. 250.

## CHAPTER XXII.

185. What is a summary trial? What offences may be tried summarily and by whom? See s. 260.

186. Give a brief narrative sketch of the general provisions relating to summary trials. See ss. 260-265.

187. Does an appeal lie from conviction under the summary procedure? See s. 414.

## CHAPTER XXIII.

188. Describe briefly a criminal trial before the High Court Sessions. See ss. 267, 273, 283, 286, 296, 297, 305.

189. Can the Provincial Government take away the right of trial by jury? If so, when? See s. 269.

140. Has the complainant a right to be heard in person or by pleader in a trial by (1) the High Court (2) a Court of Session, and (3) a Magistrate; and, if so, under what limitations? See ss. 270, 439, 492, 493, 495.

141. Describe shortly a trial held by the aid of jury, beginning from the appearance of the accused before the Court of Session and ending with the recording of the final order. See ss. 271-309.

142. Describe the procedure for choosing a jury in trials before a Court of Session. See ss. 274-283.

143. State the grounds of objection that may be taken to a jury. See s. 278.

144. What is the procedure to be followed in each of the following cases:—

(a) where during the trial of a case, a juror falls ill and is unable to attend;

(b) where during the trial an assessor falls ill and is unable to attend;

(c) where in a case which is being tried by a jury, the accused suddenly falls ill and is unable to continue his defence?

See ss. 282, 283, 285.

145. When can a jury be discharged? See ss. 282, 283, 305, 561A.

146. Briefly describe the procedure of trial before a Sessions Judge with the aid of assessors. See ss. 284, 285, 286-294, 309.

147. What is the procedure in the Court of Session (1) when one assessor and (2) when both assessors are during the trial unable to attend? What is the procedure which should be adopted when after the accused had pleaded and the assessors had been appointed, but before any other proceeding had been begun, one of the assessors is found unable to attend? See s. 285.

148. After a jury has been chosen in a Sessions trial what are the duties of the presiding Judge down to the close of the trial? See ss. 286-306.

149. What is the procedure for admitting the deposition of a witness taken before the committing Magistrate as evidence in the Sessions trial? See s. 288.

150. Under what circumstances does the prosecution in a Sessions trial obtain a right of reply? See s. 292.

151. In cases tried by jury what are the respective duties of the jury and the Judge in a Sessions trial? See ss. 293, 299.

152. How far is the verdict of the jury at a Sessions trial (a) in the High Court (b) in the mofussil, binding upon the presiding Judge? See ss. 305, 306.



153. State the procedure where the Sessions Judge disagrees with the verdict of the jury. See s. 307.

154. What is the procedure to be followed in a jury trial if a previous conviction is to be proved against the accused? See s. 310.

#### CHAPTER XXIV.

155. In what cases may a pardon be tendered to an accused person under the Criminal Procedure Code? See s. 337.

156. What are the provisions of the law relating to tender of pardon to an accomplice? How may such pardon be forfeited? See ss. 337, 338.

157. In what proceedings can an accused offer himself as witness on his own behalf? See s. 340 (2).

158. When can an accused person be examined by the Court? See ss. 342.

159. State the mode in which the examination of an accused person is conducted and recorded. What is his liability for refusing to answer questions put to him? See ss. 342, 344.

160. Can a Magistrate postpone *sine die* a case pending before him? Give reasons for your answer. See s. 344.

161. What is a "compoundable offence"? What is the legal effect of a valid composition? See s. 345.

162. State the law as to compounding of offences. Can a complainant withdraw his complaint in any case except such a case as can be lawfully compounded? See ss. 248, 249, 345.

163. What Magistrates are competent to commit an accused for trial to the Court of Session? What is the procedure to be adopted by a Magistrate who is not so competent but who is of opinion that the case he is hearing ought to be committed? See s. 347.

164. A Magistrate after holding a trial in part ceases to hold office and is succeeded by another Magistrate. State the procedure to be followed in this case. See s. 350.

#### CHAPTER XXVI.

165. Can a Criminal Court alter or revise its own judgment after it is signed? See ss. 369, 395.

#### CHAPTER XXVII.

166. What are the powers of the High Court as a Court of confirmation? See s. 376.

#### CHAPTER XXVIII.

167. State the provisions of the law relating to whipping. See ss. 390, 391, 392, 393, 394.

168. How and when should whipping be carried out if awarded in addition to imprisonment or as a specific punishment? See ss. 390, 391.

169. What persons cannot be sentenced to whipping? See ss. 393, 394.

170. What is the procedure when it is thought desirable to confine a juvenile offender in a reformatory? See s. 399.

#### CHAPTER XXIX.

171. Explain in brief the power to (1) suspend, (2) remit, or (3) commute sentences passed on accused persons. See ss. 401, 402.

## CHAPTER XXX.

172. Discuss and explain the maxim, "It is an established rule of criminal law that a man may not be put twice in peril for the same offence." See s. 408.

173. State precisely the rule which bars the second trial of a person upon the same facts, and mention exceptions, if any, to the rule. See s. 408.

174. Write an explanatory note on the principle of *autrefois acquit*. See s. 408.

175. What is the rule contained in the Criminal Procedure Code with regard to previous acquittals and convictions? See s. 408.

## CHAPTER XXXI.

176. Mention all cases in which no appeal lies from the judgment of the Court. See ss. 404, 413, 414.

177. To what Court does an appeal lie from an order refusing to accept or rejecting a surety? See s. 406.

178. What are the rules of law as regards appeals from the decisions of an Assistant Sessions Judge? See s. 408.

179. On what matters is an appeal admissible on behalf of a person who is convicted in a trial held with the aid of a jury? See ss. 410, 418.

180. When an accused person has been convicted on his pleading guilty, can he appeal on any ground? See s. 412.

181. Under what circumstances, if any, is there no appeal from a sentence passed by a Court of Session, a District Magistrate, a Magistrate of the first class, a Magistrate of the second class? See ss. 412, 413, 414.

182. Mention all the cases in which no appeal lies from the judgment of a criminal Court. See ss. 412, 413, 414.

183. Under what circumstances would an appeal lie from a sentence passed in a summary trial? See s. 414.

184. Does an appeal lie against an order of acquittal? See s. 417.

185. On what grounds can an appellate Court set aside the verdict of a jury? See s. 418.

186. What are the powers of an appellate Court in disposing of an appeal? See s. 428.

187. What are the powers of an appellate Court in hearing an appeal from conviction and from acquittal respectively? See s. 428.

188. State the procedure to be adopted by an appellate Court if it is of opinion that it is necessary to take additional evidence in the case. See s. 428.

189. What is meant by further inquiry? How can it be obtained? See s. 428.

190. State the procedure to be adopted by the appellate Court if it considers it necessary to take additional evidence in the case. See s. 428.

191. State briefly the procedure to be followed when Judges of the Court of appeal are equally divided in opinion. See s. 429.

192. What happens to an appeal on the death of the appellant? See s. 431.

## CHAPTER XXXII.

193. What are the provisions in the Code relating to powers of reference? See ss. 432, 433, 434.

194. Discuss whether any Judge or Magistrate can reserve any question of law and refer the same to a High Court. See s. 434.

195. What are the powers of a Sessions Court as a Court of revision? Is an order passed by a District Magistrate liable to be revised by a Sessions Judge? See ss. 435, 437.

196. What remedies has an accused when he has been awarded a non-appealable sentence? See ss. 435, 439.

197. What powers of control have Sessions Judges and District Magistrates over subordinate Court? What procedure should they follow when they wish to alter or reverse a sentence passed by an inferior Court? See ss. 435-438.

198. What are the powers of the High Court as a Court of revision? What other Courts are empowered to revise the proceedings of subordinate Courts and to what extent? See ss. 435-439.

199. Are the powers of a Court of revision more restricted. If so, in what way? See s. 439.

200. Give an account of the appellate and revisional powers of the High Court in a criminal case. See ss. 423, 439.

201. Is a Court exercising its power of revision bound to hear the parties? See ss. 439 (2), 440.

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#### CHAPTER XXXIII.

202. In what respect does the trial of a European British subject differ from an ordinary trial under the Criminal Procedure Code? See. c. xxxiii.

203. State briefly some of the principal changes which have been recently made with regard to the special provision in the Criminal Procedure Code relating to cases in which European and British Indian subjects are concerned. See Chaps. xxxdii and xliiA.

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#### CHAPTER XXXIV.

204. What are the provisions laid down in the Code of Criminal Procedure for dealing with a lunatic accused? See Chap. xxxiv.

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#### CHAPTER XXXV.

205. What powers Courts in general have to deal with offences committed before it or brought under its notice in the course of a judicial proceeding? Does the power extend to all offences? State the procedure for exercising the powers. See s. 476.

206. May a superior Court (i) set aside a complaint duly made by a subordinate Court, (ii) revoke a sanction granted by it? See s. 476A.

207. In what cases is a civil Court empowered to assume certain functions of a Magistrate? See ss. 478, 479, 480.

208. When may a criminal Court commit a person to imprisonment in civil jail? See ss. 480, 485.

209. Describe the powers of Courts in general to proceed against a person for contempt of Court. See ss. 480-484.

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#### CHAPTER XXXVI.

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211. Is a person bound to maintain his illegitimate child? See s. 488.

212. Under what circumstances can the amount of maintenance once fixed be reduced or increased? See s. 489.

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 216. Enumerate the cases in which an accused person may be released on bail before and after conviction. See ss. 496-500.  
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